STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street 21st Floor
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SUMMARY OF AND RESPONSE TO THE FIRST ROUND OF WRITTEN AND ORAL PUBLIC COMMENTS FOLLOWING PUBLIC NOTICE ISSUED SEPTEMBER 5, 2008

PAY-DRIVE (USAGE BASED AUTO INSURANCE) REGULATION

File No. REG-2008-00020 **September 2, 2009**

NOTE REGARDING PUBLIC COMMENTS AND THE DEPARTMENT OF INSURANCE'S RESPONSES: All public comments that were submitted in a timely fashion are summarized in this document. The Department has responded to all of the public comments in a separate companion document titled RESPONSES TO PUBLIC COMMENTS. The corresponding response or responses to each comment are indicated after each comment summary below.

NOTE REGARDING SUMMARIES OF ORAL COMMENTS: For each individual who provided both written comments and oral comments at the Public Hearing on October 20, 2008, oral comments that do not duplicate the written comments are summarized immediately after the individual's written comments. A few commenters only spoke at the hearing and did not submit oral comments; their comments are summarized after all of the written comments.

1. **Joint Letter from Tina Andolina for Planning and Conservation League; Stuart Cohen for Transportation and Land Use Coalition; Dan Silver for Endangered Habitats League; Michael Chiacos for Community Environmental Council of Santa Barbara; John Boesel for California Secure Transportation Energy League; Patricia Monahan for Union of Concerned Scientists; Tim Carmichael for Coalition of Clean Air; Leonard Conly for Friends of Bus Rapid Transit.**

P1, ¶1: The PAYD regulations improve transportation and minimize environmental impacts. Although it provides an important foundation for improving insurers' ability to verify actual miles driven, more should be done to ensure full implementation.

Response: A + G.

P1, ¶¶2-3: Mileage verification should be compulsory for all policies. Specifically, insurers should be required to verify mileage of all their insureds for one year after this program's implementation. This will give them the necessary data to properly rate insureds.

Response: B + O.

After the first year auto insurers should be required to base rates on actual mileage. Performance standards should be applied so that consumers are rewarded for driving less. The performance standard data (which will show the relationship between risk of loss and number of miles driven) gathered should be updated every two years.

Response: B + N.5.

These standards should also be used to reward drivers for "reasonable changes in driving behavior."

Response: B + C + F.

P2, ¶1: The Department should incentivize insurers to implement Department-defined mileage bands that are narrower than required by the law. The Department could do this by allowing insurers to advertise something like a Department-certified "green" seal of approval, or other incentives for insurers to go beyond the minimum required.

Response: B + E.

P2, ¶¶2-3: The Hamilton Project of the Brookings Institute indicates PAYD insurance will result in an 8% reduction in miles driven and that this will equal to 7-9% of the total CO_2 reduction needed to meet AB 32's goals for 2020 and will reduce other toxic emissions. Two thirds of California households will save an average of $276 per vehicle per year.

Response: A + G.

The only way to achieve the full benefit of PAYD is make it a regular, standard offering which rewards insureds for driving less.

Response: A + O.

The Commissioner should amend the regulations to mandate verified mileage for every policyholder and to "put greater emphasis on absolute mileage and relative changes in mileage."

Response: A + O.

Leonard Conlys oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments contained in the above joint letter are summarized below):

PP51:6- 52:19: Mr. Conly represents Friends of Bus Rapid Transit (BRT). PAYD will reduce vehicle miles traveled (VMT) and therefore improve transit operations.

Response: U

Insurance is related to global warming and the PAYD regulation provides an opportunity to help the state comply with AB-32 to help minimize VMT. Global warming is related to the loss of the Sierra glaciers and therefore our water supply. Greenhouse gas emissions can be reduced by 8% with mandatory PAYD. This could reduce California greenhouse gas emissions by 2 1/2% -- a huge amount. Please keep AB-32 in mind when drafting these regulations.

Response: A + G.

2. John Richmond, CSAA Inter-Insurance Bureau

P1 – P2¶1: Historically, the Department has 16 optional rating factors and does not allow insurers to combine rating factors except "Years of Driving Experience" can be combined with certain optional rating factors. However in 2006, even this limited combining of factors was eliminated for practical purposes when the Department required the factors to be disaggregated. This caused "premium dislocation" for some insurers which was then mitigated by pumping and tempering other factors. Due to the 2006 disaggregation change, insurers now have to artificially manipulate relativities to minimize the impact on their rates.

Response: U.

P2,¶2: Allowing the combining of rating factors creates new factors allowing insurers to innovate in setting rates. This leads to insurers offering different prices which leads to more choices for the consumer. The last sentence of CCR 2632.5(e) should be removed and the language that was in existence prior to 2006 should be reinstated.

Response: H.

Comments on (c)(2)(E)

P2, ¶3: The regulation states that the PAYD must be voluntary. Does that mean a company must offer PAYD as well as non PAYD products? Would it prohibit start ups from offering a usage based product? The regulation should allow affiliated insurers to select one company to offer PAYD as long as there was a company that that did not offer it.

Response: I + O. In addition, the regulation does not specifically address the question of whether an insurer could offer the verified mileage program in an affiliate. However existing law may require that the insurer make both programs available to all applicants regardless of whether they are offered in separate affiliated companies.

P2, ¶4: CCR 2632.5(c)(2)(D) and (E) contradict. Section (E) requires that mileage be verified through a number of methods including those allowed in (D) 1 and 2. But (D) 1 and 2 do not require that an insured furnish the service records or install a technological device to be eligible for verified miles. If the insurer bases its pricing on verified mileage then the insured should be required to provide verified miles. Therefore the cross reference to (D) is incorrect.

Response: D + F. Note that the former CCR 2632.5(c)(2)(E) is now (F). In addition, (D) is optional to both the insurer and the insured in all cases. As the commenter points out, section (F) (formerly (E)) mandates that mileage be verified whenever a verified mileage program is offered. However, just because the insurer requests (but does not require) mileage verification by a method allowed in (D) does not necessarily convert an estimated mileage program into a verified mileage program under these regulations.

P2, ¶5 to P3, ¶1: Therefore, CSAA encourages adding verified miles-driving behavior characteristic such as speed, time of day and braking activity as permissible rating factors.

Response: B + M.1.

3. Prof. Robert W. Peterson, Institute of Insurance Law & Regulation at Santa Clara University School of Law

P1, ¶1: This commenter "associates himself" with Dorothy Glancy's comments that he says were sent to the CDI in Ms. Glancy's October 5, 2008 letter to the Department. He is enthusiastic about PAYD. However he is concerned about the use of technological devices and privacy and recommends consumer education about its costs, benefits and risks to privacy.

Response: A + E + U.

Given the vague language of subsection (E)(iii) about technological devices made "otherwise available" to the insured, consumers should be warned of any ability to collect and preserve more data than miles driven.

Response: N.19 + N.20.

Privacy Issues should be Approached as if Pay-Drive were Mandatory

The "opt in" option for PAYD may be illusory because economic benefits will dictate all drivers will switch to PAYD over time. This is because the current system of using estimated mileage is unreliable. Those who currently overestimate their mileage are subsidizing those who underestimate their mileage. With PAYD, the subsidy will go away because accurate estimators and over estimators will switch to PAYD, and the rates of underestimators will go up. More and more will opt in until virtually all drivers "opt in."

Response: G + U.

P2, ¶2: The Relation between Miles Driven and Premium Should be as Linear as Possible

PAYD pricing should be linear and broad mileage bands should be eliminated. With broad mileage bands, the most important mile driven may be, for example, the one between 4,999 and 5,000 miles per year and this is a poor way to reward drivers for driving less.

Response: K.

P2, ¶3 – P4: For the Convenience of Consumers, the Authorized Methods of Verification Should be Broader than the Proposed Regulation Permits

Under the mileage verification options permitted in sections (E)(1) and (E)(1)(ii) of the proposed regulation, the insured is only allowed to use one other form of verification besides going to an agent or using technological devices. The language of the regulation is too restrictive and consumer unfriendly. Using service records from an automobile repair dealer should not be the insureds' only choice, in part because a car dealer may try to sell unnecessary services and products to the insured.

Response: B + D + E + F.

Consumers should also be able to avail themselves of automobile services providers such as oil change stations and tire shops. In fact use of these types of services providers seems to be endorsed by the existing regulation under CCR 2632.5(c)(2)(D)(1).

Another alternate to technological verification in the already existing regulation CCR 2632.5(c)(2)(E) is verification using smog check odometer readings from the Bureau of Automotive Repair. The following specific language is proposed for "(E)(1)."

> "*(ii) through reasonable reliable records, such as those from auto repair dealers, as defined by section 9880.1 of the Business and Professions Code, through odometer readings from smog check stations, or from other businesses, such as automobile registration services, automobile lubrication businesses, automobile and tire repair and replacement businesses, or any other business or service, which, in the regular course of their business, records odometer readings. In addition, verification may be made in any other way acceptable to the insurance company*."

Response: D + F.

The regulations should also limit the amount that can be charged for recording an odometer reading. If the charge is too high it could eliminate the financial benefit of PAYD to consumers. Alternatively, the department could require insurers to reimburse the cost of obtaining an odometer reading, to a cap.

Response: F.

4. Mark C. Brucker, Transportation Analyst

P1: The proposed regulations take a step in addressing the deficiencies in meeting Proposition 103.

Response: A + G + U.

Usage-based insurance has substantial benefits for safety, economic savings, equity and the environment. According to Bordoff and Noel and Erin Edlin, these potential benefits amount to over $20 billion per year for California. Usage-based insurance gives an incentive to the most dangerous drivers to reduce mileage and reduce the risk they create.

Response: A + G.

<u>Comments on the Proposed Regulations Content:</u>

The proposed regulations allow that records from a repair dealer can be used to verify mileage. Clarify that records from any automotive repair dealer could be used to verify mileage.

Response: D.

Allow the DMV's mileage records (and a third party such as Carfax) mileage records to be used to verify mileage.

Response: D + F.

P2: <u>Comments on What the Proposal Does Not Do</u>:

PAYD would have large social benefits. However due to externalities the regulation as currently written will not result in broad adoption by the public. In fact, it is possible that no insurers will offer PAYD policies under these regulations. PAYD should at least be mandatory for insurers and preferably for consumers as well.

Response: B + O.

<u>Performance Standards</u>;

In order to actually make miles driven the second most important rating factor the following changes are required:

Require narrow mileage bands or eliminate them altogether and base rates on mileage without bands (pay per mile). The mileage bands should be no more than 100 miles.

Response: K.

Ensure that the weight of the non-mandatory factors are kept lower than mileage and the other two mandatory factors. In addition the total collective weight of all the optional rating factors should also be limited. This would ensure that the second mandatory factor will continue to carry the second most weight in determining the overall rate. According to Mr. Brucker's evaluation of insurers none has even come close to meeting the Proposition 103 requirement that mileage be the second most important factor.

Response: L. In addition, the current regulation does not have a limit on the total collective weight of all optional rating factors. Placing a limit on the collective weight of all optional rating factors is not required by the statute and is not necessary to assure that the second mandatory factor retain its place as the second most important rating factor.

Require that rates for comparable drivers will be significantly different depending on how many miles they drive. Further, low mileage drivers should not continue to subsidize high mileage drivers.

Response: K.

5. Harald D. Trautsch, Octo Telematics

OCTO Telematics is the leading European provider of telematics equipment for PAYD insurance. They urge the adoption of additional rating factors such as time of day, carbon emissions, average speeds and types and classification of roads on which the vehicle is driven to more precisely rate policies. Telematics equipment makes it easy for insurers to adopt very narrow/detailed mileage brackets.

Response: M.1.

There should be a discount or other incentive from the insurer to promote the use of the on board reporting system.

Response: F + V.

Privacy issues can be taken care of with proper disclosures to the consumers on what information is being collected, how it will be used and a definition of ownership rights to ensure that the information collected is compliant with ISO privacy standards.

Response: N.3.

OCTO Telematics does not believe that information Telematics would be collecting would create additional privacy exposure because it is no different than the information left behind when credit cards, ATMs, or cell phones are used. The Telematics services will allow communications for emergency response, crash notification, roadside assistance, SOS distress calls, diagnostics, navigation or location based services.

Response: N.19.

6. Michael Newton, Student, Harvard Business School

The proposed regulation enables greater mileage accuracy and thus more accurate pricing. However, the regulation seems to fall short of achieving the full potential benefits of PAYD.

Response: A + G.

The CDI should consider allowing insurance that is priced per mile where an insured could purchase miles for only the amount of miles driven.

Response: T.

The proposed regulations appear to require existing insurers to offer both verified and non-verified mileage verification. If a new insurer entered the CA market would it be required to offer both or could it just offer verified insurance.

Response: An insurer may offer a verified actual mileage program only.

7. Environmental Defense Fund (Fact Sheet) (contact: Lauren Navarro)

Fully Implemented PAYD Insurance: Key to Full Cost Savings, Pollution Reductions
PAYD must be mandatory in order to achieve the full predicted benefits of greenhouse gas reduction while saving the insurer and insured money.

Response: B + O.

PAYD Can Yield Large Greenhouse Gas and Pollution Reduction
PAYD can reduce vehicle miles traveled (VMT) and related green house gas emissions and reduced traffic and toxic pollution. The Hamilton Project of the Brookings Institution indicates fully implemented PAYD insurance would result in an 8% reduction in miles driven which is equal to the 7-9% of the total CO_2 reduction needed to meet the goals of AB 32.

Response: A + U.

P1, ¶3: PAYD Can Cut Insurance Costs Especially for Low to Moderate Income Households
Two thirds of California households will save an average of $276 per vehicle per year, and low to moderate income families would benefit the most. Rural drivers would save as much money as urban drivers because geography already determines insurance rates. Since PAYD would decrease the number of accidents, all drivers benefit from safer roads.

Response: A + G + U.

PAYD Can Cut Insurance Industry Costs

Increased PAYD participation would translate into a reduced number of accidents and financial savings for all insurers. The savings realized by one insurer from a reduction in accident externalities is shared with other insurers by decreasing accident risks with their policyholders. If PAYD is mandatory all insurers would mutually benefit.

Response: A + G + O + U.

PAYD or mileage verification should be mandatory. If PAYD participation is voluntary, the first insurers to offer it will absorb most of the cost, but large-scale implementation will substantially and evenly distribute the expenses. Moreover, the benefits will be realized sooner and on a more substantial basis.

Response: B + O.

Externalities Impede Market Penetration of Mileage-Based PAYD in other States

> "PAYD policies based on simple odometer-based verification, as proposed in California are unavailable even in states where they are allowed. GMAC insurance offers mileage-based PAYD Insurance in 34 states exclusively for vehicles equipped with on-star cellular/GPS technology, with discounts of up to 54% for low mileage drivers. In the second half of 2008, Progressive Insurance launched a new policy called My Rate in seven states, with discounts of up to 60% for low mileage drivers who also avoid aggressive driving. These programs seek to overcome the externality barrier by including noninsurance features or non-mileage rating factors. With all that mileage-based PAYD insurance has to offer, the department should overcome the externality barrier on a larger scale to ensure that mileage-based PAYD is widely adopted in California."

Response: C + H + M.1 + U.

P2, ¶3: Overcoming Barriers That Impede Widespread PAYD Adoption

There are many methods that may boost penetration of PAYD programs that are impractical due to budgetary constraints and the current economic environment. For example, the state could finance studies on the effectiveness of PAYD and offer various types of financial aid and incentives to insurers and insureds to enroll in the PAYD.

Response: E.

The only way to expand PAYD participation is to mandate mileage verification and "PAYD insurance pricing."

Response: B + O.

8. Lauren Navarro, Environmental Defense Fund (Letter)

P1: EDF supports the Department for proposing this regulation to reduce greenhouse gas emissions. The proposed regulation addresses mileage verification but further steps are necessary. In this letter PAYD refers to "programs that meet performance standards set out by the Department and that adjust premiums … based on actual miles driven … Additional rating factors, including driving characteristics such as frequency of hard braking and acceleration may also be included.

Response: A + M1.

If all drivers participate in PAYD there will be fewer cars on the road resulting in a substantial reduction of greenhouse gases in California.

Response: G.

The following Table appears that the bottom of page 1:

Summary Table and Definition of Terms

	Partial PAYD	Full PAYD	PAYD Plus
Definition	Programs that meet performance standards for mileage band width, weight placed on mileage, and weight placed on the relativity of mileage bands, set out by the Department. For example, these programs could have mileage bands of 1000 miles or less, with weights determined by the Department.	Programs that meet performance standards for mileage band width, weight placed on mileage, and weight placed on the relativity of mileage bands, set out by the Department. For example, these programs could have mileage bands of 101 miles or less, with weights determined by the Department.	Programs that meet the standards of a Partial or Full PAYD program and include additional factors, such as braking and accelerations.
Phase-in	In year one, all insurance companies would be required to verify mileage ("Phase 1"). After an additional 6 months of verification and program development, they would be required to meet these standards for all policies ("Phase 2").	Permitted once regulations go into effect. Would receive incentives.	Permitted once regulations, including appropriate privacy protections, go into effect.

Response: K + M.1.

P2, ¶1: EDF urges a phased implementation of PAYD. In the first phase of 18 months, insurers should be required to verify the mileage of all of their insureds and gather mileage to risk data. During this phase in insurers should be encouraged to offer PAYD programs. In phase 2 insurers should be required to offer PAYD programs using the data gained in phase 1 and should be required to use mileage brackets of 500 miles or less. With the information gathered, the Department should define partial PAYD (see chart above) performance standards for approval during phase 2.

Response: B + K + M.1 + O + P.

P2, ¶2: The Department should make PAYD mandatory to eliminate adoption barriers to the industry. This will make PAYD more widespread and will save the industry by reducing accident payouts.

Response: B + O.

Widespread availability of PAYD would also provide choice and flexibility for the consumer.

Response: G.

P2, ¶3: Consistent with the chart shown above, the Department should define performance standards that insurers must adhere to pursuant to the chart shown above. The Department-defined standards should be based on data collected in phase 1 and should be updated every few years. The performance standards should allow for a wide variety of programs and assure that insureds are rewarded for even modest reductions in miles driven. For example, the Department could specify the frequency of odometer readings or guidelines for providing "timely periodic feedback" about how consumers could save money by driving less or driving more safely.

Response: B + K + O + P.

Mileage brackets should be no larger than 500 miles. In any event, they should be smaller than required by full PAYD programs.

Response: B + K.

P2, ¶4: The Department should also "explore monetary and regulatory incentives to get insurance companies to meet these standards." The Department should also permit the use of advertising language by insurers describing a PAYD program as "environmental", "mileage-based" or "mileage-based certified" to companies that meet more stringent standards defined by the Department. Alternatively the Department "could label these programs 'Mileage-based certified' [and allow insurers to advertise this certification if they have mileage brackets of less than 101 miles]."

Response: B + E + J.

P3, ¶1: Section 2632.5(c)(2)(E)(4) of the proposed regulation requires insurers offering PAYD to also offer traditional insurance. This will limit the ability of startup PAYD companies to enter the market and otherwise create unnecessary barriers to the full potential of PAYD. In order to minimize privacy concerns and enable mileage verification for all drivers, section (E)(4) should be changed to:

> "'An insurer may offer technology to track mileage to its policyholders, but such insurer shall provide at least one other method to verify mileage. An insurer may require the use of technology were necessary to participate in programs based on additional factors, such as braking and acceleration, and may require mileage to be tracked by that technology.'"

Response: F + M.1 + O.

The subsection (E)(1)(i) calling for the option of verification by “an employee or agent of the insurer” should be expanded to make mileage verification options more available to insureds at more locations such as service stations. Specifically, it should be amended to permit verification through:

> “‘an employee or agent of the insurer and any vehicle service stations, including smog check stations, approved by the insurance company.’”

Response: F

P3 ¶3: The regulation should allow the possibility of self certification of odometer readings by the insured. This would be far superior to the insureds' mileage estimates. Self -reported mileage at the end of the policy period under penalty of perjury backed by periodic independent audits. Reporting at the beginning would be an estimate and the end would be an accurate indicator of actual miles driven.

Response: F.

The frequency of informing customers of the relationship between miles driven and policy premium has been shown to have a linear relationship to the amount of traffic and Greenhouse Gases emitted. Frequent self certification of odometer readings would serve to remind customers of the relationship between miles driven and cost and this will reduce the number of miles driven.

Response: B. + G. In addition, the Department has chosen not to impose any specific requirements regarding the frequency of mileage tracking and/or reporting in verified mileage programs.

P3, ¶4: Insurers should be permitted to use other rating factors, such as braking, acceleration and speeding habits, to reduce Greenhouse Gases. These factors will allow bad drivers to reduce premiums by building a driving history similar to rebuilding credit.

Response: B + M.1.

P4, ¶¶1-2: The use of technology is required to fully utilize these additional factors. Technology that tracks location and time of day may raise privacy concerns and its use is discouraged. The Department should adopt privacy safeguards to ensure protection of private data retrieved from PAYD devices.

Response: D + N.1 + N.3 + N.7 + N.8 + M.1.

The regulations should not bar the voluntary use of global positioning system devices provided that the consumer's location is not disclosed to compute PAYD premiums. The devices can collect data and interpret that data for purposes of determining the appropriate premium for the insured without the data itself ever being transmitted to the insurer or retained in the device.

Response: D + N.19 + N.20 + M.1.
Of course the department should adopt stringent privacy safeguards for such technology based data.

Response: N.1 + N.7.

Lauren Navarro oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments (including the NRDC fact sheet also summarized above) are summarized below):

PP45:4-46:9: The study by the Brookings Institute shows that every household income group making less than $47,500 per year would save money as result of PAYD insurance. Higher income drivers would save as well.
PP46:10-15: All drivers benefit from fewer cars and safer roads.
PP46:16-48:9: All insurance companies will benefit from other insurers PAYD programs because of reduced cars on the road, fewer accidents and so forth. However, if PAYD is voluntary, those companies that enter the market first will bear the brunt of the expense and barriers to entry will prevent many insurers from deciding to offer PAYD programs.

Response: A + U.

PP48:10-49:5: Because of the current economic situation, methods to stimulate the market for PAYD policies at government expense are impractical. Therefore the only viable option to achieve widespread adoption of PAYD policies is to mandate basic mileage verification and pay-as-you-go pricing.

Response: O.

9. Aaron Edlin Article: The Accident Externality from Driving

Pages 931-952 of this comment do not directly address the proposed regulation. It focuses on the technical relationship between traffic density and the correlation it has with accidents. The author is pointing out that decreasing traffic density will decrease the risk of accidents. This can be accomplished through the building of additional highways to reduce density or the implementation of a Pigouvian tax per mile, per driver, per gallon of gas or insurance premium. The author believes that this would be an effective method to address the true social cost drivers impose when they drive.

Additional drivers increase traffic density to the cost of $1,725-$3,239 per year.

California highways with higher traffic density have substantially higher accident rates.

Safer roads with high density are inherently safer because the roads are safer.

Traffic density increases accident costs substantially whether measured by insurer costs or rates.

A driver that stops driving or reduces her driving, not only suffers lower accident losses but other drivers also have less accident losses as a result.

The number of cars per accident could increase as people drive more and traffic density increases.

Traffic density like premiums varies substantially among states and over time.

Affluent people tend to drive more which will create a density correlation; affluent people can afford safer cars that can reduce premiums but more expensive cars cost more to fix and if injured the lost wages would be higher, therefore increasing premiums.

High traffic density states have very high accident costs.

If traffic density increases then people will find driving less attractive and driving less reduces their risk exposure.

The state could begin a massive road building campaign to lower traffic density.

The straightforward way to deal with traffic density is to levy a Pigouvian charge either per mile, per driver, or per gallon so that people will pay something closer to the true social cost they impose when they drive. (A Pigouvian tax is a tax levied on an agent causing an environmental externality (environmental damage) as an incentive to avert or mitigate such damage) An example: If the U.S. were to slowly increase gas taxes until we're in the $8 range, life would be better. We'd not only be safer and have reduced greenhouse-gas emissions, we'd probably be happier too. We could use the tax revenue to fund public transportation. And we'd go back to the days when driving a car was a way to show off. We would no longer need SUVs for that.

The point of such a tax would be to significantly reduce miles driven resulting in fewer accidents.

The best way to administer a Pigouvian tax is though a gas tax. This way anyone who drives would be affected.

The most efficient way to address accident externalities would be to impose a large tax on insurance premiums.

Response to the portion of this article that is summarized above: U.

Pages 953-954: The second best compromise would be to require insurance companies to quote premiums by the mile. A per mile plan premium calculation will be more reflective of the mileage that drivers actually accrue (for example on average women drive less than men but pay comparable premiums).

Response: B + T.

Currently rates account for heterogeneity in risk. The per mile rate should be set so that those in highly dense areas and those with poor driving records face the highest per mile rates giving an incentive to drive less thereby reducing accidents.

Response: This proposal would conflict with the auto rating factors which set the three most important mandatory rating factors. Further, setting rates higher for those who live in high density areas is beyond the scope of this regulation.

Without regulatory intervention (making PAYD programs mandatory) there is little incentive for insurers to introduce PAYD programs because many of the benefits are external to the insurer while most of the costs are internal.

Response: B + O + V.

10. Chris Gay, MileMeter Insurance Company

P1, ¶1: MileMeter was the first company to offer an approved per mile insurance product

Response: G + U.

PP2-3, ¶¶1-10: MileMeter sells insurance by the mile in Texas. Its programs offer the following benefits (1) Cost: lower cost for low mileage drivers; (2) Convenience: fast online transactions with 24/7 online access; (3) Customization: including the ability to choose individual coverages and number of miles purchased; (4) Transparency: consumers can easily see the benefit of driving fewer miles; (5) Affordability: consumers can reduce their insurance costs by driving less; (6) Non-sexist; MileMeter's policies do not discriminate between male and female drivers; (7) Increased Compliance: by buying smaller blocks of miles (as small as 1000 miles) it is easier for some insureds to comply with the state's financial responsibility laws; (8) Privacy: MileMeter does not use GPS or other technology to track mileage nor does it use credit scoring; (9) Safety: nationwide implementation could prevent 3100 traffic fatalities and 210,000 traffic injuries per year and an estimated 12 billion in annual national savings related to accident reduction; (10) Environmental and Social Responsibility: less driving leads to better air quality, lower carbon and other tailpipe emissions, less runoff, less road congestion and fewer parking lots as well as increased use of mass transportation.

Response: G + U.

P3, Last Paragraph: This paragraph basically summarizes items that are stated earlier in this letter.

Response: A + G + U.

P4, ¶2: First, the insurer must be allowed to require the submission or collection of verified odometer readings from drivers.

Response: F.

Under the proposed regulations insurers can only adjust premium or provide discounts after mileage has been verified. Insurers should be able to price by the mile at the start of the coverage period. By allowing the consumer to purchase a block of miles at the beginning of the coverage period the cost of each mile will be transparent and provide the drivers an incentive to drive less and allow them to regulate their vehicle expense.

Response: F + T.

P4, ¶3: Second, the regulation is far too restrictive with regard to what can be used to verify mileage. Allow the insurer to use every reasonable source of odometer data to verify mileage with the consent of the driver. This should include public and private databases, title records, emission inspection records, and vehicle service records.

Response: D + F.

P4, ¶4: Third, policyholders should be able to provide/report odometer readings.

Response: D + F.

However, if the insured provides false or misleading information about odometer readings insurers should be permitted to refuse coverage and deny claims due to fraud or material misrepresentation.

Response: R.

P5, ¶1: Fourth, allow policy periods to be determined by time, miles or a combination of the two. Example: Effective Dates:10/20/08-4/20/09; Mileage Effective: 50,000 to 51,000 miles. "You are covered until the soonest occurrence of 4/20/2008 or an odometer reading of 51,000."

Response: T. In addition, insurers must comply with the notice of cancellation and notice of expiration provisions of California Insurance Code Section 663.

P5, ¶2: Modify Insurance Code Section 716 to waive the "seasoning" barriers for usage-based providers. The code requires that a company have 1 year of operations to request an exemption. This prevents new companies from entering the market and slows the roll out of PAYD.

Response: B + E + S.

Chris Gay oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

P11:10: Consumers like per mile auto insurance and want to buy it.

Response: A.

PP12:13-13:5: If a consumer elects usage-based insurance, the insurer must have the ability to obtain verified odometer readings. The proposed regulations only allow insurers to adjust premiums after mileage has been verified. A better way would be to allow consumers to pay for the miles up front (as they do with this commentator's company “MileMeter”).

Response: T.

PP13:9-14:10: Insurers should be able to verify mileage at the time of policy purchase. By purchasing pay-as-you-go insurance consumers should agree to allow the insurer to collect data from public and private databases including emission inspection, title transfer and vehicle service records. Insurers should also be able to collect mileage data at any time the policy is in force.

Response: D + T.

PP16:11-13: There is a cost for an insurer to extend coverage.

Response: U.

PP16:14-22: Certain coverages (collision and/comprehensive) have time-based components.

Response: U.

PP63:10-64:8: Based on the comments of all parties everyone seems to be afraid of these regulations but, in reality, the regulations provide opportunities for all parties to benefit.

Response: A + U.

11. Alan Lloyd and Bob Epstein, The International Council On Clean Transportation and Environmental Entrepreneurs (ICCT + E2)

P1, ¶1: The comment supports PAYD. CDI should revise the regulation to require that insurers offer PAYD.

Response: B + O.

P1, ¶2: PAYD will create incentives for consumers to drive less if broad implementation occurs.

Response: A.

P2, ¶1: Based on modeling scenarios performed by the ICCT, full implementation of PAYD in Santa Clara County would reduce CO2 emissions by 360,000 tons per year. In addition the model indicates that society would accrue at least $170 to $230 million annually in "externality" benefits.

Response: U.

P2, ¶3: If insurers are not required to offer PAYD programs, many insurers will decide not to incur the costs associated with developing and implementing the program and will not participate although they will receive benefits accruing from those who do participate. The regulation should require that all insurers offer PAYD in order to: 1) Ensure that all companies would bear the development and implementation cost allowing all to reap the potential benefit of mileage based insurance. 2) Be an incentive to new companies to enter the market if they would be allowed to offer only mileage based insurance. 3) Benefit low income drivers who drive less.

Response: B + O.

P2, ¶4: There should be a period for pilot projects before requiring that insurers offer a selection of PAYD coverages. The CDI should establish a reporting system to monitor and ensure widespread implementation of PAYD.

Response: B + O + P.

PAYD programs should be launched without delay because delay translates into lost benefit.

Response: U.

Ed Pike oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

PP53:5-14: Transportation is the largest source of greenhouse gas emissions in California. This will summarize the comments of the president of the International Council on Clean Transportation (Dr. Alan Lloyd). He is also the chair of the economic and technology advancement advisory committee created under California's Global Warming Solutions Act. The letter is also signed by Dr. Bob Epstein, cofounder of Environment Entrepreneurs and vice chair of the ETAC committee.

Response: U.

P53:15-25: Companies that want to offer only mileage based insurance should be allowed to do so.

Response: F.

PP54:1-55:24: The benefits that would accrue to society as a whole from PAYD policies would outweigh the benefits to the individual company and policyholder by more than 5 to 1. Accordingly, since only a small portion of the benefits go to the company and policyholder, a purely voluntary system may not provide adequate incentives to entice early adoption by companies that must bear the cost of setting up a system, verify mileage and so on. Alternatively if all companies offer it they all share all the costs and benefits in addition to societal benefits such as greenhouse gas emission reductions and so forth.

Response: B + O.

PP55:25-56:12: According to the Brookings Institute study, low income drivers drive less so they potentially benefit from pay-as-you-drive insurance.

Response: A + U.

12. Randall Farwell, Automobile Club of Southern California Interinsurance Exhange

P1, ¶2: The Automobile Club of Southern California (AAA) supports CDI's policy objective of making premiums more closely reflect the actual number of mile driven.

Response: A + U.

P1: Verified Actual Mileage

P1, ¶5: Allow verification of mileage through third party vendors and service records.

Response: A + D + F.

P2: AAA reports that it has had "great success for many years" relying on self certified odometer readings provided by policyholders but that it crosschecks this information with publicly available data to confirm reliability. AAA proposes specific language changes that will expand the list of available verification methods and will make them more consumer friendly.

AAA would also allow multiple discounts depending on the type of verification provided only if the different reporting methods actuarially justify different discounts. Specifically, AAA would add the following language to CCR 2632.5 (c)(2)(E) (proposed language shown in ***boldface italicized type***):

> ***(iv) by odometer readings of the insured vehicle or vehicles provided by the policyholder. The insurer may further verify the actual mileage provided by the policyholder using any of the other verification methods set forth in this subdivision (E.) or by smog check readings obtained pursuant to subdivision (F); or***
>
> ***(v) through service records of automotive repair dealers, as defined by section 9880.1 of the Business and Professions Code, smog check odometer readings, state motor vehicle records and other information obtained by the insurer from consumer reporting agencies or other vendors.***

3. An insurer employing verified actual mileage pursuant to this subdivision may provide a discount to policyholder reflecting any cost savings are increased actuarial accuracy associated with obtaining and using actual mileage rather than estimated mileage. ***An insurer may also provide a different discount or multiple discounts based on the verification method used in obtaining actual mileage driven.***

Response: F. While the Department did not adopt the exact language offered, the Department did amend the language of the regulation to adopt large portions of these recommendations.

P3: Related Mileage Factors

There is a difference in loss exposure based on where miles are driven; for example, rural v. urban. Allow for interaction between miles and location to address potential overcharges to the rural high mileage driver.

Response: B.

P3, ¶¶ 4-5: There is a correlation between annual miles and type of use (high mileage/commute v. low miles/pleasure). The current regulation does not allow consideration of the effect of both of these rating factors simultaneously. Commuters would be charged rates that are too high because they belong to two high risk groups - mileage and use. To address this, the commenter requests that CCR section 2632.5(e) be amended to allow interaction of annual miles with vehicle use, claim frequency and claim severity while maintaining that driving safety record, mileage and years of experience receive the greatest consideration.

Response: B.

P3: Combining Mandatory and Optional Factors

The changes made in 2006 to CCR section 2632.5(e) created confusion. Specifically the second sentence seemed to limit an insurer to calculate a more accurate cost based rate. Delete the second sentence to clarify the intent of the first sentence and allow insurers to offer consumers rates that are more reflective of the expected loss experience.

Response: Q.

PP3-4: Other Considerations

AAA is concerned about patents owned by Progressive Insurance Company that may cover the monitoring and recording of data that is necessary in order to offer PAYD programs. AAA requests that the CDI seek clarification from Progressive about the scope of its claimed patents. AAA encourages the CDI to make sure that the PAYD regulations do not unfairly benefit one insurer over another because of patents.

Response: Q + U.

Alice Bisno (representing the Auto Club of Southern California) oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

PP57:2-58:11: The Auto Club of Southern California would like to see the ability to collect mileage information directly from the consumer added to the PAYD regulation as a method to verify mileage. However some sort of extra verification through the sources identified in the regulation as well as some other sources should be included. Pricing incentives to provide odometer information and verify it will encourage compliance.

Response: D + F+ V.

13. Beth Givens and Deborah Pierce, Privacy Rights Clearinghouse and Privacy Activism

P1, ¶¶1-2: Californians should not have to sacrifice their privacy to reap the benefits of PAYD.

Response: U.

Introduction – Factoring in Privacy

If PAYD is successful, consumers will experience lower premiums and gain various environmental and societal benefits.

Response: A

This program hinges on methods of mileage verification. Technology that tracks more than miles poses privacy risks to consumers and this gives rise to issues regarding its secondary use. GPS is by far the most intrusive type of technological device. Consumers should not be forced to use an electronic tracking device as a condition to having premiums based on actual miles driven versus estimated mileage.

The collected data should be limited to mileage only.

Response: N.18 + N.19 + N.20.

This commenter applauds the Department's concern for consumer privacy by prohibiting GPS devices and making PAYD voluntary. Furthers steps should be taken to ensure privacy is not compromised for lowered premiums.

Response: A + N.19 + N.20.

Onboard Devices Should Only Track Mileage

Even non-GPS devices can track information other than just mileage. For example, some devices can track driving behavior such as acceleration and deceleration patterns, among other things. However, the regulations don't currently prohibit the collecting of any particular data and don't specifically preclude use of GPS technology. The final rule should eliminate the use of GPS technology and should only permit tracking of vehicle mileage.

Response: M.1 + N.19 + N.20.

P3, ¶¶3-6: Options for Verifying Mileage:

a. Consumers Should Choose Verification Method

The proposed regulations allow three permissible ways for mileage verification. Although participation in PAYD is completely voluntary, the proposed regulation allows the insurer to choose the method of verification. If an insurer chooses to require an onboard device this would raise serious privacy implications because the currently proposed subsection (D)(2) does not limit data collection to mileage. To relieve consumers' privacy concerns and fears, the regulation should allow the consumer to choose the method of verifying actual mileage.

Response: B. Although an insurer can choose the verification options it will make available to its policyholders, consumers can consider the verification options which an insurer offers in determining whether or not to do business with that insurer.

b. Consumers Should Have More Choices to Verify Actual Mileage

Consumers should be given greater choice in how mileage is verified. Data from a reliable source should be accepted. For example, a rural driver may be required to drive a great distance to the nearest insurance agent, and this contradicts the goal of reducing the number of miles driven. Consumers who want to save money should not have to shoulder these added costs of PAYD implementation.

Response: B. The Department does not expect that insurers will require policyholders to drive a great distance to an insurance agent as the only way to have miles verified. Nevertheless, a consumer can choose to do business with an insurer offering mileage verification methods which are convenient for him or her.

The proposed regulation allows insurers to accept vehicle service records from an automobile dealer. Although this is a valid method, it is flawed because those who drive less have less wear and tear on their cars translating to fewer service calls. Also, the current recession may cause owners to reprioritize the importance of car maintenance. This leaves the consumer with only one choice and that is to accept an onboard tracking device.

Response: B + D. The Department does not expect that an insurer will offer only the two referenced choices (service records or technological devices) as the only ways in which mileage may be verified.

Other ways for insureds to verify mileage include reports obtained from a verifiable source or an automobile repair dealer. "The more choices consumers have to verify actual miles other than tracking devices, the more likely they are to reap the benefits of PAYD insurance premium."

Response: A + D + F.

P5: Recommendations

The commenters summarize their suggestions in the form of recommendations as follows:

- Limit data collection to actual miles driven

Response: N.19 + N.20.

- Consumers should choose the method of verification

Response: B.

- Consumers should be given more ways to verify mileage

Response: D.

- Section (D)(2) should be eliminated for vagueness.

Response: N.16.

The regulation should be amended to address the "secondary" use of data collected by technological devices. Specifically, the regulation should make sure that consumers who agree to use of technological device are provided the following disclosures:

- Clear notice of the precise data to be collected
- Explanation of how the data will be used
- A notice that secondary use of the data is prohibited by the regulations

Response: N.2 + N.3.

Conclusion

The Department should consider consumer privacy rights in drafting these regulations.

Response: U.

Beth Givens oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

P8:19-22: Some electronic devices other than GPS devices collect more data than actual mileage such as acceleration and deceleration rates.

A device that could record all the things the insurers want would amount to an “onboard surveillance system” which should be rejected.

Response: F + N.19 + N.20.

P9:15-22: The argument that consumers will have choice regarding whether to accept the use of an electronic device may be illusory. If the PAYD system is significantly cheaper many consumers may not be able to afford to "choose" the traditional option and will feel compelled to except the PAYD device.

Response: This comment is speculative. Additionally, as with any product or service less expensive than another, a consumer must weigh all of the options and choose the alternative which is best for his or her needs.

“Secondary Use” of data (using data for a purpose other than the stated purpose for which it was collected) should be prohibited.

Response: N.19 + N.20.

Deborah Pierce oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

PP49:10-50:25: The more information that is tracked, the higher the risk that the information will be compromised and/or used inappropriately.

Response: M.1 + N.10 + N.14 + N.19.

14. Joanne McNabb; California Office of Privacy Protection

P1, ¶¶1-2: The California Office of Privacy Protection (COPP) is a consumer education and advocacy office with the statutory mission to “protect the privacy of individuals’ personal information in a manner consistent with the California Constitution by identifying consumer problems in the privacy area and facilitate the development of fair information practices.” Per Government Code § 11549.5, COPP is also specially directed to make recommendations to organizations for privacy policies and practices that promote and protect the interests of California consumers.

Response: U.

P1, ¶¶3-4: Section 2632.5 should be amended to define “technological devices.” The definition should do the following:

(1) Limit the type of data that can be collected by technological device to mileage only.
(2) Specifically exclude devices that collect or transmit location data or driving behavior data, and
(3) Prohibit devices that can transmit data wirelessly while the vehicle is being driven.”

Response: F + M.1 + N.14 + N.16 + N.19.

P2, ¶¶1-2: California is a leader in privacy and the state Constitution guarantees "the right to pursue and obtain privacy." However, recent technological innovations have created new data security risks and opportunities for fraud and this has raised public concern. In response, California has adopted consumer privacy protection laws that limit the use of personal information.

Two of these laws were passed in response to privacy concerns similar to those raised by PAYD. In 2003, AB 213 required the presence of an "event data recorder" in an automobile to be disclosed in a vehicle's owner's manual and placed limits on retrieval of data without the owner's consent. The following year, A.B. 2840 prohibited car rental companies from accessing or using data by electronic surveillance subject to strict limitations. Both measures passed without a No vote.

Response: U.

P2, ¶¶3-4: The commenter suggests that one of the tenets of fair information collection is limiting collection to the minimum amount of data that is essential to serve its purpose.

Response: F. The regulations do so.

In this case, mileage is the only information that is essential to achieve the purpose of the regulation and is the only data that should be collected. Allowing insurers to obtain any more data could adversely affect freedom of association and other First Amendment rights. The regulations should be amended to prohibit collection of any personally identifying information other than the number of miles traveled. In a footnote, reference is also made to the California state government privacy website at www.privacy.ca.gov.

Response: F + N.14+ N.19.

P2, ¶5 – P3, ¶1: On the issues of how the PAYD rates should be clearly and fairly communicated to consumers, attention is directed to the June 18, 2008 comments of Beth Givens and the October 5, 2008 comments of Dorothy Glancy.

Response: Please see the responses set forth elsewhere in this rulemaking file.

15. Samuel Sorich and Rex Frazier, Association of California Insurance Companies (ACIC) and Personal Insurance Federation of California (PIFC)

These commentators represent two industry trade groups with many member insurers.

Response: U.

P1: Rating on the actual number of miles driven instead of estimated annual miles driven is conceptually a good idea and the proposed regulations incrementally improve on the current auto rating system. However to achieve significant environmental benefits and real rate incentives to consumers will require additional changes.

Response: U.

P2: The commentators believe that their substantive amendments would increase competition and increase the chances that PAYD will succeed in California. The commentators have relied on a study by actuary Shawna Ackerman which they attached (the "Ackerman" study) [The comments of Ms. Ackerman are summarized and responded to separately] to offer technical input regarding the proposed regulations as written as well as substantive amendment.

Response: U.

Background

The current auto rating system mandates cross subsidies among consumers and restricts innovation that is allowed under Proposition 103. Innovation (such as PAYD) is needed to remedy these problems.

Response: U.

PAYD should allow insurers as much flexibility as possible and should be implemented in a way that promotes innovation but does not that require a particular approach that would "pick market winners and losers." Flexibility will help ensure that the industry embraces PAYD. Otherwise PAYD will fail.

Response: A + F +U.

PAYD should not require specific types of mileage verification. Instead PAYD should be structured to allow insurers to develop their own forms of mileage verification in which they develop expertise. Carriers generally don't develop expertise in all available forms of mileage verification. Done properly, this will result in a wide array of discounts available to consumers who agree to carrier-developed mileage verification standards.

Response: F.

New technology makes it possible to track actual miles driven in real-time.

Response: U.

The original backers of Proposition 103 praise the concept of rating on controllable factors such as the number of miles one drives. However, the backers of Proposition 103 have inexplicably opposed using technology to measure miles driven in voluntary programs. Voluntary opt in PAYD programs using technology should be considered the gold standard with regard to resolving privacy concerns and should be permitted.

Response: U.

P3: Suggested Technical Amendments to the Proposed Regulations

Proposed Amendments to Section 2632.5(c)(2)(E)(1)

These commenters state that the permitted methods for verifying mileage under the new regulations raise certain questions. First, are other forms of verification, such as smog check odometer readings that are mentioned in subsection (F), allowed? Second, could more than one verification method be used if justified? Third, could third-party service records be used for odometer verification? Fourth, what is meant by "an agent of the insurer." To clarify the regulation these commenters request consideration of the following amendments.

Response: F.

First, allow an insurer to use multiple verification methods; second, allow use of odometer readings provided by any reliable source including "vendors;" third, allow insurers to verify mileage through any "other means filed with the commissioner."

Response: F.

Proposed Amendments to Section 2632.5(c)(2)(F)

In addition to obtaining smog check odometer readings from the Bureau of Automotive Repair, allow insurers to obtain odometer readings from the Department of Motor Vehicles as well.

Response: F.

P4: Suggested Additional Amendments

Based partly on member company feedback and an analysis provided in the Ackerman Study, these commenters believe that even with the above proposed technical amendments, the regulations will fail to achieve demonstrable market innovation in PAYD insurance. In order to remedy this problem, they propose additional amendments consistent with Proposition 103.

Response: U.

Proposed Amendments to CCR Section 2632.5(e)

The commenters believe that section 2632.5(e) impedes market innovation by preventing interactions between rating factors and distorting the relationship between the second mandatory factor (annual mileage) and the third mandatory factor (years of driving experience).

Response: B.

P5: Increased rating factor interaction will produce market innovation consistent with Proposition 103

Citing to the Ackerman Study as authority, these commenters state that Proposition 103 already combines two rating factors (Driver Safety Record and Years of Driving Experience) in the good driver discount and also measures these rating factors separately. This is an example of rating factor interaction that already exists in Proposition 103 and produces a powerful consumer discount.

Response: B + H + U.

These commenters urge the commissioner to allow additional combinations of two or more rating factors as long as this would increase the predictive power of the rating plan. However, these commenters would exclude the territorial rating factors (Claims Frequency and Claims Severity) because to include them would be too controversial.

Response: B + H.

P6: Commenters state that CDI would retain the power to approve or disapprove any rating factor interactions proposed by insurers.

Response: B + E + H.

The Current ARF Regulations Unnecessarily Cause Unfair Subsidies and Prevent Market Innovation

These commenters object to the requirement in the existing section 2632.5 (e) that when rating factors that are combined with number of years of driving experience (the third mandatory rating factor), the rating factors still must individually comply with the weight ordering requirements of section 2632.8 (hereinafter "the individual weight order requirement"). These commenters claim that the individual weight ordering requirement did not exist in the previous version of the regulations and that it is not required by Proposition 103. They cite to the Ackerman Study and the court in Spanish Speaking Citizens' Foundation, Inc. v. Low, 85 Cal.App.4th 1179 (2000), as authority for these assertions.

Response: Q.

Citing the Ackerman study again, these commenters assert that if the goal of the individual weight ordering requirement is to ensure that the individual weight of each optional rating factor is less than the individual weight of a mandatory rating factor this goal can be accomplished in other ways such as a straightforward prohibition regarding rating factor weights.

Response: Q.

P5, ¶6: For the reasons summarized above, and to "improve the PAYD proposal" these commenters specifically request that section 2632.5(e) be amended to read in its entirety as follows:

> "2632.5 (e) The three mandatory factors may be combined with any other factor, except Claims Frequency and Claims Severity. No optional factor may yield a weight that is higher than the third mandatory factor."

Response: B + E.

PP7-8: New Optional Rating Factors That Allow Drivers to Control Insurance Outcomes Would Improve the Likelihood of PAYD Market Innovation

The proposed changes would probably be insufficient to inspire the market to embrace PAYD. However, allowing additional optional rating factors that reveal how and when the insured drives would give the insured a degree of control over her insurance rates and would hold great consumer appeal. Referring to a report by the Brookings Institution as well as a study of a PAYD program by the Minnesota Department of Transportation and a case study of PAYD in the Netherlands, these commentators urge that allowing additional rating factors for time of day and week, driver speed, aggressiveness and possibly other factors showing driving characteristics should be allowed in California. By comparison, relying only upon annual mileage to determine rates in a PAYD program would be insufficient.

Response: M.1.

P9: Conclusion

As the *Spanish Speaking Citizens* case demonstrates the Commissioner has enormous powers to encourage market competition. In order to create a viable opt-in PAYD program the commissioner should: 1) adopt the technical recommendations discussed in their comments; 2) eliminate the current restrictions on combining rating factors so as to allow additional discounts; 3) allow additional rating factors, particularly those that allow drivers a measure of control over their auto insurance rates/outcomes.

Response: U.

Sam Sorich oral comments as recorded in the transcript of a the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

P26:2-8: Mr. Sorich co-authored the written comments of the ACIC and PIF summarized immediately above. On page 25 of the transcript of the hearing Mr. Sorich reiterates some of the requests made in the above comments. Specifically he urges that the regulations be amended to clarify that actual mileage may be verified by "one or more" of the permitted means. He also reiterates his written requests (summarized above) that odometer readings be permitted by "any reliable source" and that insurers should be able to obtain mileage/odometer readings directly from repair shops ().

Response: F.

P26:21 to P27:5: Mr. Sorich points out that there may be costs associated with verifying mileage and that these costs may not be fully recognized in the efficiency standard in the current regulations during the first few years. He suggests that the Department consider providing a variance, particularly until PAYD is widely available. This would allow insurers that offer

PAYD programs to recoup some of their costs, particularly until they are fully recognized by the efficiency standard (three years).

Response: B + E + W.

P27:6-12: The Department's interpretation of 2632.5 (e) creates an inherent limitation on the significance that can be given to verified mileage.

Response: Q.

P27:16 to P29:16: Based on several studies that have been provided to the Department prior to the commencement of this rulemaking proceeding, simply verifying mileage will not achieve the goals of PAYD insurance. Additional rating factors for quality-of-miles driven such as speed, acceleration/deceleration patterns and others will be necessary to achieve the goals of PAYD insurance in California.

Response: B + M.

P29:17 to P30:2: Insurers should be able to verify mileage by obtaining mileage reports directly from consumers as one of the additional methods that should be made available.

Response: F.

Rex Frazier oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

P31:4 to P33:9: The proposed regulations are basically nothing more than the current mileage verification regulations with some enhanced ability to verify mileage. As it is, the talk of discounts in the range of 15 to 25% is not realistic with the mileage verification enhancements in the proposed regulation. Additional flexibility would be required to make PAYD insurance available to insureds who want it. Under the *Spanish Speaking Citizens* case, the Department has extensive discretion to implement an innovative PAYD system in California.

Response: U.

P33:12 to P35:10: The good driver discount in California law is really a combination of two factors (driving safety record and years licensed). The restrictions on combining rating factors are unnecessary. Insurers should be able to petition to use and combine multiple rating factors subject to the Department's review. This would help promote innovation.

Response: B + H + U.

16. Shawna Ackerman, Pinnacle Actuarial Resources, for Association of California Insurance Companies (ACIC) and the Personal Insurance Federation of California (PIFC)

Ms. Ackerman is a consulting actuary and former employee of the Department.

Response: U.

P3: According to Actuarial Standards of Practice (ASOP) #12, appropriate risk characteristics should be objective, practical and related to expected outcomes. With regard to objectivity, using actual miles driven rather than estimated mileage for the second mandatory factor is a significant improvement.

With regard to practicality, using actual miles driven will be more costly than using estimated mileage for the second mandatory factor but the regulation is voluntary. Therefore, using actual miles driven is practical for those insurers that have systems in place and are willing to use actual mileage.

Response: A + U.

P4, ¶3: With regard to the relationship to expected outcomes, current law requires annual mileage (second mandatory rating factor) to have the second-highest weight and annual mileage does correlate to the risk of loss. However the weight of years licensed, as currently measured under the existing regulations, often has more weight than the second mandatory factor. Because of this, annual mileage relativities must be adjusted by pumping or tempering and the ability of annual mileage to predict losses is compromised.

Response: U.

Ms. Ackerman proposes to strengthen the relationship between annual mileage and risk of loss by allowing annual mileage to be combined with other factors related to when, how and on what types of roads a car is driven. Insureds would benefit if they had the option to be rated on how they drive instead of on just the number of miles they drive and where the driver lives.

Response: B + H + M.

P6: Implementation Concerns

There is little or no historical data for the relationship between *actual* miles driven and few if any insurers capture actual mileage on their insured vehicles. Available data (including the CDI dataset) is mostly from *estimated* mileage. Accordingly, until the insurers develop actual experience, they will need to use some judgment in selecting rating relativities. There is no dataset for actual mileage unless CDI allows insurers to assume an exposure distribution. Accordingly, it is unclear how the actual mileage factor weight is to be determined under the proposed regulation. It follows that there should be no expectation of the size of discounts based on the use of actual mileage.

Response: F.

The intended benefit to get people to drive less "is an overall benefit that extends well beyond the insurance mechanism." Further, there is no guarantee that there will be any benefit to a particular insured for selecting verified annual mileage. For example, if the insured drives more than she expects to drive her premium could be higher than if she had chosen to use estimated mileage.

Response: U. The Department agrees that there is no guarantee that every insured who elects to purchase a verified mileage policy will necessarily benefit as a result. The Department does not view this as a significant impediment to the regulation.

P7: Cost Implications

The use of verified actual mileage instead of estimated mileage will involve increased costs, some of which this commentator identifies as examples. However, there are no data to determine the specific amount of increased costs. As experience develops, the costs will show up in the insurers' annual statements and become part of the calculation of the efficiency standard pursuant to regulation section 2644.12 which limits the expenses an insurer may use in calculating rates. Since the efficiency standard is based on a three-year average, the full effect of the additional expenses will not appear for at least three years after the insurer begins to incur them.

Response: U. The Department agrees that The efficiency standard is based on three years' of data. The Department does not view this as a significant impediment to the regulation.

Another issue is that insurers will undoubtedly implement the regulations in different ways at different times. Some insurers will incur the additional expenses before others and since the efficiency standard is an industry average by distribution system, the whole industry will be assumed to have implemented the new regulations at the same cost. This commentator observes that there is no variance in the prior approval regulations that would allow relief from the efficiency standard in this situation.

Response: B + W.

P8: Comments on §2632.5(e)

Proposals to amend CCR §2632.5(e).

The first sentence of CCR 2632.5(e) was implemented in 1997 for two main reasons. First, to allow insurers to continue the pre-existing practice of combining the third mandatory rating factor (years licensed) with optional factors. Second, in practice, the second mandatory rating factor (annual miles driven) is actually less predictive than the third mandatory rating factor (years licensed). By allowing insurers to combine the third mandatory rating factor with optional factors, the third mandatory rating factor can assume all weight less than the second mandatory rating factor. This made the legally mandated order of importance for the three mandatory rating factors consistent with the actuarially proven power to predict losses. However, the second sentence of CCR 2632.5(e) which was added in 2006, requires the insurer to disaggregate the third mandatory rating factor from any factor it is combined with for purposes of calculating the weight of the third mandatory rating factor. Accordingly, the second sentence, as it is currently interpreted, can create a tension between the second and third mandatory factors. In other words, disaggregation of the third mandatory factor requires pumping and or tempering of the second and third mandatory factors to return them to the statutorily required order of importance.

Ms. Ackerman provides examples in two appendices demonstrating her points with regard to §2632.5(e).

She proposes to remove the second sentence from CCR 2632.5(e) and to remove the restrictions on interactions with other rating factors where the insurer can demonstrate a substantial relationship to the risk of loss.

The specific proposed language for section 2632.5(e) is as follows:

> (e) The three mandatory factors may be combined with any other factor, except Claims Frequency and Claims Severity. No optional factor may yield a weight that is higher than the third mandatory factor.

Response: B + E + Q + U.

Comments on CCR §2632.8(a)

The regulations require that weights be calculated for six coverages including bodily injury, property damage, medical payments, uninsured motorists, comprehensive and collision. However, the first mandatory rating factor (driving safety record) does not apply for uninsured motorists or comprehensive coverages. Accordingly, the indications based on these factors are often abandoned and other methods are used in order to align the weights of the rating factors pursuant to CCR 2632.8(d).

This commentator also proposes to limit the types of coverages for which factor weights must be calculated to only "bodily injury and property damage."

The specific language suggested for §2632.8(a) is as follows:

> (a) For bodily injury and property damage, factor weight shall be calculated for each of the three mandatory factors listed in section 2632.5(c)(1) through (3) and for each of the optional factors the insurer elect's to utilize in its class plan (from section 2632.5(d)). Solely for the purpose of calculating factor weights, bodily injury coverage may be combined with property damage coverage.

Response: B + E + Q. This regulation is amending section 2632.5, not 2632.8.

17. Samuel S. Kang, Greenlining Institute

P1: Introduction

¶¶1 – 3: On May 23, 2008, CDI gave Notice of Workshop for PAYD and comments were to be received until close of business, June 18, 2008. More comments were invited until October 20, 2008. Additional comments were provided subsequently.

Greenlining supports PAYD because it will reduce the number of cars on the road, reduce risk generally, and reduce the cost of auto insurance. However, in order to maximize its benefits, the program needs to be made more accessible to low income drivers.

Response: A + U.

Petitioner Description

P1, ¶4 to P3, ¶1: Greenlining represents "those who have traditionally been marginalized or excluded from the California regulatory process." Greenlining's bylaws authorize representation of low income, minorities and residential customers before regulatory agencies. Footnote 1 lists approximately 31 associations that are included in the "Greenlining Coalition."

Response: U.

The Insured's Driving Safety Record Should be a PAYD Factor

P2, ¶2 to P4, ¶2: Greenlining summarizes CIC §1861.02(a) and the decreasing order of importance of the three mandatory rating factors. The public notice of the proposed regulation only emphasizes the second factor. But Greenlining suggests for the regulation to help low-income drivers the first mandatory factor (driver safety record) must also be a PAYD factor and must be "given substantial weight" under any PAYD program. .

Response: The first mandatory factor will continue to receive the most weight, as required by Proposition 103.

Driver Safety is a Matter of Public Concern

P3, ¶3 to P5, ¶1: The obvious benefit of PAYD is the less a consumer drives, the less they pay. Less driving reduces risk of accidents for drivers and commuters on the road. Allowing the measure of how safely the insured drives (presumably as another rating factor) would further reduce risk and incentivize drivers to drive more safely.

One way to measure driver safety is through a small wireless device similar to the one used by Progressive Insurance. This device captures driver acceleration and braking behavior.

Tracking how, and not where, a driver drives does not raise privacy issues but is a matter of public safety.

Response: M.1 + M2. In addition, the Department notes that safe driving characteristics are not the same as the first mandatory rating factor. Allowing a measure of how safely the insured drives would require new rating factors.

Driving Safety Factor Would Maximize PAYD's Adoption By Low Income Drivers

P4, ¶¶2-3: Limiting PAYD to the second rating factor will not benefit low income drivers as they tend to live far away from their jobs and do not have access to public transportation. Therefore low income drivers will be less likely to participate in PAYD unless they see a real benefit. Adding driving safety as a factor will increase PAYD uptake among this population because it is the only way to see real savings.

PAYD is advantageous to low income drivers as they tend to be safer drivers. Driver safety record should be a PAYD factor as it is a matter of public concern, which outweighs privacy issues.

Response: M.1 + M2. In addition, the Department notes that safe driving characteristics are not the same as the first mandatory rating factor. In fact, allowing a measure of how safely the insured drives would require new rating factors.

Conclusion

P5, ¶1: For PAYD to be an attractive option for low income drivers, it must fully incorporate Proposition 103. Driver safety record is the number one rating factor. Therefore, the proposed regulation should be amended to measure and rate driving behavior of long distance drivers. This will maintain standards set by Prop 103.

Response: M.1 + M2. In addition, the Department notes that safe driving characteristics are not the same as the first mandatory rating factor. In fact, allowing a measure of how safely the insured drives would require new rating factors.

18. James Curtis, Progressive Insurance Company

P1, ¶¶1-2: Progressive supports PAYD generally and endorses the comments of ACIC, PIFC and Pinnacle Actuarial Resources.

Response: U.

P1, ¶3: Does not believe that the full benefits of PAYD can be accomplished unless there are further modifications made to the ARF Regulations.

Response: U.

Clarification of Proposed Regulation:

P2, ¶1: Mileage Verification Options:

The options for verifying mileage should be expanded to allow third party vendors of the insurer to provide odometer readings -- not just an agent or employee of the company as provided for under (E)(1)(i).

Response: D + F.

P2, ¶3: Source of Information:
The words "by the policyholder" should be deleted. An insurer should be allowed to obtain odometer readings directly from an auto repair dealer.

Response: F.

P2, ¶3: Premium Relativities:
A discount to the policyholder who opts in to an actual mileage verification program basically allows the insurers to use different rate relativities for those who opt in. For example, lower rating factors for lower verified mileage bands and higher rating factors for higher mileage bands. This should be clearly stated in the regulations.

Response: V.

P2, ¶5: Three specific language changes are proposed to accomplish the above items:

(1) Add the words "third party vendor" to (E)(1)(i).

Response: F.

(2) Strikethrough the words "~~by the policyholder~~" in (E)(1)(ii).

Response: D + F. The Department did not strike the specific words requested but added language allowing the insurer to retain a vendor.

(3) Add the words "provide different rating relativities to policyholders" in (E)(3).

Response: B.

Additional Reforms to the ARF Regulation

P3, ¶1: By limiting the scope of the PAYD regulations to verified miles driven, the proposed regulations create pricing and economic hurdles that may prevent insurers from being able to provide meaningful premium incentives to attract consumers. This promises to undermine the regulation. The Commissioner should consider the following items to remedy this problem.

Response: U.

P3, ¶¶2-3: (first bullet point) **Pricing Accuracy**: PAYD will likely make miles driven (the second mandatory rating factor) more predictive for those who participate. But consumers will still be able to get a lower rate by underestimating their actual mileage in a traditional auto insurance program. This reduces the incentive for consumers to participate in PAYD and may make it difficult for insurers to succeed with a PAYD program. This problem is made worse by the weighting requirements in CCR section 2632.8. This may prevent an insurer from being able to successfully implement PAYD. Therefore even with the PAYD program, the miles driven factor will have to be artificially inflated (pumped) to comply with the weighting requirements.

This problem could be remedied by allowing insurers to use driving characteristics as additional factors and to allow the insurers to combine driving characteristics factors with miles driven. These changes would allow insurers to weight mileage in a way that is more consistent with its actuarial weight instead of pumping and tempering factors to give them the artificial weight order that is prescribed by CCR section 2632.8.

Response: B + E + M.1.

P3, ¶4: (second bullet point) **Technology Cost**: The efficiency standard may not allow an insurer to recover its technological expense in the overall rate level. Insurers would need to be able to recover their technological expenses associated with implementing PAYD programs. Specifically, insurers need to be able to charge a technology fee which is outside of the insurance transaction to cover these costs. In addition CDI would need to grant a variance for any fee and cost of technology to keep it outside of the efficiency standard.

Response: B + W.

P4, ¶1: (third bullet point): **Auto Rating Factor Weighting Requirements:** With the introduction of brand new PAYD programs, insurers will have no experience from which to price and will need to make assumptions about how to weight the miles driven factor under the regulations.

Response: U.

To address the concerns in the above bullet points, Progressive recommends adding new rating factors for driving behavior (time of day, speed of operation, number of right and left hand turns, and sudden stops and starts). By combining these factors with miles driven, insurers will be able to price each risk more accurately.

Response: B + M.1.

P4, ¶3: Progressive specifically proposes adding a new optional rating factor as follows:

> (17) Measurable indicators of driving behavior including, but not limited to, the time of day the insured vehicle is operated, the number and frequency of left and right hand turns, and the number of sudden acceleration since the celebrations of the insured vehicle.

Response: B + M.1.

P4, ¶5: Progressive also proposed a specific amendment to CCR section 2632.5(e) that would eliminate the disaggregation provision of CCR 2632.5(e) (added in 2006), and to allow more combinations of mandatory and optional rating factors.

Response: B + E +Q.

P4, ¶¶5-8: The above change will be necessary for the implementation of PAYD but also to improve the accuracy of predicting the risk of loss. Therefore, broaden CCR section 2632.5(e) to allow additional combinations of rating factors when it can be shown that interactions exist. This will improve rating accuracy and make class plans actuarially sound.

Response: B + E.

P5, ¶1: Eliminate the limitation added in 2006 that requires insurers to disaggregate the weight of the combined factors such that the majority of the weight is placed on years of experience.

Response: Q.

Anticipated Objections to Proposed Changes to the ARF Regulation

P5, ¶2: Manual mileage verification should not be required. Not all companies have the ability to manually verify mileage in a cost efficient way.

Response: F.

P5, ¶3: Privacy: In other states, Progressive currently uses data gathered for insurance rating and underwriting. This data is voluntary and the customers are advised on the type of information gathered and how it is used. If someone is concerned with privacy issues they can choose not to participate.

Response: B + N.14 + N.19 + N.20.

P5, ¶4 to P7, ¶1: Due to the level of privacy protections provided by the Graham Leach Bliley Act, the California Financial Information Privacy Act and the California Insurance Information and Protection Privacy Act, privacy issues should not interfere with the adoption of PAYD.

Response: The Department agrees with this comment.

19. Staci Heaton, Regional Council of Rural Counties

P1, ¶1: RCRC is concerned that rural drivers will be penalized with higher rates because they have to drive farther for jobs and services. These higher rates will offset lower rates given to urban drivers who may not be required to drive as much for the same reasons. The Department should make sure that rural drivers are not forced to subsidize low-mileage urban drivers through PAYD programs.

Response: O + X.

P1, ¶3: RCRC is concerned that in the future PAYD could be made mandatory, and requests that PAYD be made optional now and in the future.

Response: E + F. Concerns that Pay-As-You-Drive programs could become mandatory are speculative and beyond the scope of this rulemaking proceeding.

20. Russina Sgoureva, Farmers Insurance Group

CCR 2632.5 (2)(E)(1)(i): Farmers proposes specific language to allow insurers the option to contract with third party to verify odometers.

Response: F.

CCR 2632.5 (2)(E)(1)(ii): Farmers proposes specific language to allow insurers the option to use "third-party aggregators" of mileage data instead of only through service records of an automobile repair dealer.

Response: F. The regulation allows insurers to obtain odometer readings from vendors retained by the insurer.

CCR 2632.5 (2)(E)(3): Farmers supports the discount for increased actuarial accuracy but finds it unclear how the discount would work. Farmers requests clarifying language (and proposes specific language) indicating that the discount would be part of the secondary mandatory factor.

Response: V. The Department did not adopt the comment requesting that the discount be considered part of the second mandatory factor.

Farmers further requests that the regulations allow for discounts between annual mileage and verified mileage if it can be shown that there exist different levels of expenses associated with each program.

Response: F + V.

Farmers points out that there may be different levels of improvement in loss costs and different levels of expenses in different verification programs.

Response: U.

P2, ¶1: Farmers supports the comments of Shawna Ackerman on behalf of ACIC and PIF recommending changes to CCR 2632.5(e) to allow combining three mandatory rating factors with optional rating factors, except the factors for claims frequency and claims severity. Farmers proposes specific language for this section.

Response: B + E + Q.

21. Justin Horner and Victoria Rome for National Resources Defense Council (NRDC) and California Advocacy

P1: NRDC commends the Department's interest in PAYD and urges the Department to strengthen PAYD by making it a required offering in California. NRDC is a co-sponsor of AB 32, California's Global Warming Solutions Act, and SB 375, which ties land use and transportation to climate change and reduction of VMT.

Response: A + O + U.

The price of insurance under a PAYD program can reduce miles driven in the same way that higher gas prices have been shown to reduce miles driven. Some estimate that PAYD can impact driving up to 8-10%. NRDC suggests a 4-8% reduction in driving from participation by half of all of the lowest mileage drivers.

Response: U.

NRDC recommends two approaches to PAYD in California: (1) require insurers to offer PAYD to all customers or, (2) require insurers to verify all mileage, set usage-based rates, and adopt minimum mileage bands and performance standards set by the Department.

The Department should also publicly recognize companies with exemplary PAYD programs.

Response: B +O.

Require Auto Insurance Companies to Offer a PAYD Product to Their Customers

P3, ¶1-3: The proposed regulation would be beneficial because it permits PAYD programs to exist. However, merely permitting PAYD programs to exist provides no guarantee that PAYD will be offered to enough drivers to realize its environmental protection. Accordingly the regulation should require insurers to offer PAYD programs.

Response: B + O.

In fact, numerous obstacles stand in the way of the insurance industry offering PAYD programs. These include costs of collecting the data from consumers, designing, marketing and developing various aspects of PAYD programs. [In a footnote NRDC references two articles in support.] This provides little incentive for individual insurers to voluntarily invest in PAYD. Further, while the overall savings from PAYD would be substantial, only a portion of those savings/benefits would accrue to the insurers that offer the PAYD programs.

Response: B + O. The Department believes that some insurers voluntarily intend to offer PAYD programs.

Many of the benefits of PAYD would go to society as a whole through a reduction of driving-related externalities such as global warming, poor air quality, accidents, congestion, etc. Requiring insurers to offer PAYD programs would remedy these market failures. [In a footnote NRDC references an article that discusses externalities with regard to PAYD.]

Response: B + O.

The Department could help reduce the administration cost of collecting odometer information by creating regulations to facilitate cost efficient collection of odometer data.

Response: D.

Incentives vs. Requirement

P4, ¶1 to P5, ¶1: In an effort to get insurance companies to offer PAYD-type programs some other states have offered government incentives. Oregon, Washington (King County) and Texas have offered various types of incentives and pilot programs. However, these incentives can be costly and can require participation by multiple government agencies and/or federal funding with strings attached. The incentive programs have also been disappointingly ineffective.

Because of the experiences in other states, incentives are a less promising way of achieving PAYD penetration than simply requiring all insurers to offer it. In part, due to Proposition 103 in California, insurance regulation rests with the Department of Insurance and the Department has the authority to require insurers to offer PAYD programs.

Response: O.

Set Rates for Drivers with Similar Risk Factors Based Solely on Mileage

P5, ¶¶2 - 3: Drivers with similar risks should be rated solely on mileage. Miles driven bears a direct correlation to risk. Actual miles may driven be obtained by minimal interference with driver privacy. Therefore, NRDC believes that PAYD should be a mileage-only product.

Response: M.3.

There are other driving factors that may have an environmental impact such as speed, acceleration and deceleration, maintenance, load weights, tire inflation and others. NRDC is not against the Department's consideration of these factors to the extent they relate to crash risks, but believes it is more important to get a mileage-based insurance in place quickly. The addition of potentially controversial optional rating factors could delay or derail implementation. These other factors can be added later.

Response: M.1.

Require Basic Performance Standards for PAYD Policies

P5, ¶4 – P6: The Commissioner should require PAYD policies to meet basic performance standards allowing insurance companies as much flexibility as possible in their offerings. At the same time the PAYD policies must provide "accurate enough pricing signals to reward and incentivize less driving."

Response: B.

The Department should provide guidelines to help insurers quantify and more accurately weigh mileage to comply with Proposition 103 and any new PAYD requirement. This is necessary to ensure that mileage is defined and weighted properly within PAYD programs.

Response: B + E. The Department adopted regulations implementing the auto rating factor requirements shortly after proposition 103 was upheld by the Supreme Court in 1989. The regulations were subsequently amended, further describing the mileage provisions. Insurers have been quantifying and weighing mileage for the last twenty years. The proposal is therefore unnecessary.

NRDC recommends that any PAYD product meet the following criteria [in a footnote, NRDC references material on a website for more detailed information]:

Mileage Bands: Narrow mileage bands of at around 100 miles but in no case larger than 500 miles.

Response: B + K.

Verification: The commenter recommends mileage verification needs to take place at the least in the beginning and end of the policy period. If mileage is collected more often it is likely to reduce miles driven more [presumably because it will provide better pricing signals to the insured].

Response: An insurer employing a verified actual mileage program will, by definition, verify mileage at the beginning and end of the policy period and, by virtue of the nature of the program, is likely to do so more often.

Minimum Savings per Mile Reduced: In order for PAYD to work, the per-mile price or savings must be understood by the insurer and insured. The price per mile needs to be high enough to incentivize the insured to drive less. Conversely a price per mile that is too high would make a PAYD product unattractive. In order to facilitate changeover into PAYD, the Department should set a minimum per mile price and require the PAYD policies to be within 80% of that value to qualify.

Response: B + E. Although the Commissioner has prior approval authority under California law, the Commissioner does not have authority to set a particular price per mile simply to incentivize a policyholder to drive less. Rate and Class Plan applications are reviewed and approved pursuant to applicable regulations.

Require Verification of All Miles

P7, ¶¶1-2: As an alternative to mandatory PAYD, NRDC would recommend mandatory mileage verification for all insureds as an aid to improve clarity and relative mileage as the second mandatory rating factor with the goal of moving all insurance to the PAYD approach. This alternative would still be a policy that uses mileage as a unit of exposure, requires mileage verification, has narrow mileage bands and a minimum percentage of premium tied to miles driven.

Response: B + O. The regulations contain incentives to encourage insurers to adopt verified actual mileage or pay-as-you-drive programs. However, as a policy decision, the Commissioner has determined not to require insurers to offer such programs.

Recognize Exemplary Performance

P7, ¶3: The Department could incentivize this program by creating a "Green Seal" for policies that meet or exceed PAYD performance standards.

Response: B + E.

P7, ¶4: "While Alternative #1 [above] guarantees the issuance and availability of PAYD policies, Alternative #2 [above] has the potential to affect all auto insurance policies in California, moving the overall practice of auto insurance towards a PAYD, or usage-based, approach. If Alternative #2 were adopted, NRDC would encourage the Insurance Commissioner to once again make explicit his goal of using PAYD to decrease driving and combat global warming pollution."

Response: The Department has amended the regulation to incorporate a statement of intent in section 2632(c)(2)(F).

Justin Horner oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

PP35:13-36:13: Failure to reduce vehicle miles traveled (VMT) will neutralize the environmental benefit of California's strong policies to reduce vehicle emissions.

Response: U.

PP36:14-40:7: The goal should be to migrate all auto insurance in California to PAYD.

Response: O + P. The regulations contain incentives to encourage insurers to adopt verified actual mileage or pay-as-you-drive programs.

22. Keesha-Lu Mitra, State Farm Insurance Company

Comments regarding Section 2632.5(C)(2)(E)

The second mandatory rating factor is the only factor that makes use of estimations instead of historical, verifiable information. Mileage verification should result in more accurate data. However the Department should expand the number of allowable sources for reliable and credible mileage information such as vendors.

Response: A + D + F.

Other benefits of PAYD include providing consumers more control over their rates, more accurately matching price to risk, environmental benefits of reducing overall miles, reduce traffic congestion, and furthering the intent of Proposition 103.

Response: A + G + U.

If the industry is also allowed to obtain and use information related to safe driving habits, PAYD could also help insurers to measure "safe driving" and reduce reliance on the motor vehicle report as a means to assess how safely a particular driver drives. The additional "driving characteristic" factors that should be allowed to be combined with mileage include time of day, days of the week, type of road, location, "speed intervals," number of miles per trip and aggressive maneuvers such as hard stops, starts or turns. Insurers should be permitted to recognize that two consumers with the same total miles driven may present very different risks based on these mileage-related characteristics. Safe drivers should be able to benefit by participating in a PAYD program.

Response: B + M.1.

Other suggestions for section 2632.5

Regarding 2632.5(c): Risk attributes that are homogenous for everyone are not very useful in predicting how the risk of loss varies from one person to another, and they only affect the "base rate." Further, variation of risk, measured by rating factors, will change as conditions change. For example, as prices for auto repair flatten across the state, the impact of any territory rating factor would tend to flatten as well. If rating factors are fixed absolutely it becomes impossible to rate fairly. Accordingly State Farm proposes the following modification:

> 2632.5(c) An insurer's class plan, and all rates and premiums determined in accordance therewith, shall utilize the following rating factors (the "mandatory factors") for bodily injury liability and property damage liability.~~, medical payments, uninsured motorist, collision, and comprehensive coverages~~."

The above change would remove the application of mandatory factors for medical payments, uninsured motorist, collision and comprehensive coverages.

Response: B + E + Q.

Regarding 2632.5(e): prior to the April, 2006 amendments this section permitted insurers to combine the third mandatory rating factor (years of driving experience) with certain other optional rating factors which were basically subcategories of risks under years of driving experience. Prior to April, 2006, insurers were permitted to use judgment in assigning weights within the various factors. This was allowed in recognition of the complexity of the interrelationships of the factors and helped ensure that rates remain fair and substantially related to the risk of loss. It also did not unduly burden CDI in reviewing rate filings.

Allowing additional combinations of rating factors would be a good thing and consistent with Proposition 103's general language that ensures rating to be accurate and not arbitrary. The regulation should be amended to remove most of the restrictions on combining factors. Specifically the proposed amendment is as follows:

> 2632.5(e) The three mandatory factors may ~~not~~ be combined with any other factor, except Claims Frequency and Claims Severity ~~Percent use, Academic Standing, Gender, Marital Status, and Driver Training May Be Combined with Number of Years of Driving Experience. If an insurer elect to combine numbers of years of driving experience with any other optional factor as provided in this section, the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individually, comply with the weight ordering requirements of Section 2632.8.~~

Response: B + E +H +Q.

23. Carmen Balber, Consumer Watchdog

P1, ¶3: Reducing the total number of miles driven saves consumers money, reduces insurer risk, and benefits the environment. Accordingly, this is a good time to aggressively implement the second mandatory rating factor. Consumer Watchdog supports amendments to require more accurate measurement and weight of the second mandatory factor (miles driven), as it will encourage consumers to drive less thereby achieving the above mentioned benefits.

Response: A + U.

At the same time we must make sure (a) not to compromise consumer privacy, (b) that an insurer treats the number of miles driven the same regardless of how the mileage is determined, and (c) that all rating factors continue to be weighted properly under Proposition 103.

Response: U.

P1, ¶4: As currently drafted the regulation would allow insurers to charge drivers with the same mileage differently. This raises privacy concerns. It also may not save consumers who drive less because it doesn't require insurers to more closely tie premiums to mileage.

Response: It is unclear how privacy concerns are raised if, as alleged, the regulation allows insurers to charge different premiums to drivers with the same mileage. Therefore, a specific response cannot be provided. Although insurers are not required to offer verified actual mileage and pay-as-you-drive programs, Proposition 103 requires that miles driven be the second most important rating factor. Therefore, insurers are already required to tie premiums to mileage.

Mileage rating factor

Proposition 103 already makes California the only state to require mileage to have a significant impact on premiums. Rather than create a "pay-as-you-drive" program from scratch we simply need better implementation of this mandate.

At the June 23, 2008 workshop, Consumer Watchdog encouraged the use of narrower mileage brackets for rating (under CCR 2632.8).

Insurers apply the second mandatory rating factor by having different rates for different mileage brackets. Those insurers with broad mileage brackets may charge the same mileage premium for insureds regardless of whether they increase or decrease their mileage by several thousand miles. For example an insured may pay the same premium if she drives 10,500 miles or 15,000 miles. Therefore narrower mileage rating bands more closely tie premiums to annual miles driven and are the only fair way to encourage drivers to drive less based on premiums.

Response: K + Q.

P2, ¶4: Therefore, Consumer Watchdog recommends mandating a maximum width for all mileage brackets for all insurers of 2500 miles.

Response: B + K.

P3, ¶2: For insurers who seek to meet Consumer Watchdog's proposed "green" environmental seal of approval (that the Department would offer), Consumer Watchdog recommends a maximum mileage bracket of 500 miles. This would make it easy for consumers to see how driving less would lower their rates.

Response: B + E + K.

To qualify for the Green Seal, insurers should also be required to weight the mileage brackets and should create a tool that makes it easy for consumers to calculate how much they would save by driving less.

Response: B + E.

P3, ¶4: Insurers should be encouraged to participate in the "Green Seal" program. The Green Seal program would spur competition in California's already competitive market and insurers may find it necessary to participate in order to compete successfully.

Response: B + E.

When setting mileage brackets, The Commissioner should consider setting a maximum (e.g., 25,000 miles), above which the smaller 500-2500 miles brackets would not apply. This would make it easier for the regulations to comply with the Proposition 103 weighting requirements.

Response: B + E + K.

Mileage verification

Proposed CCR section 2632.5(c)(2)(E) allows insurers to verify mileage, while (E)(4) makes the program optional and (E)(3) authorizes discounts for participation. This type of system cannot work in California because it can result in different mileage factors being charged to an insured based on how mileage is determined (estimated or verified). This violates Proposition 103.

Response: Z.

P4, ¶3: Consumer Watchdog provides an example and argues that rates must be based on the three mandatory auto rating factors and the optional rating factors. The second mandatory rating factor is the *number* of miles driven -- not how that number is determined. The method for determining the number of miles driven is not an approved rating factor. For the same reason, it is not permissible to provide a discount for drivers who agree to use technology to track their mileage. Consumer Watchdog further argues that separate programs or rates for estimated and verified mileage would be unfair discrimination in violation of CIC 1861.05. It is also a violation of CIC section 1861.02(a)(4) which provides that "the use of any criterion without approval shall constitute unfair discrimination."

For these reasons insurers cannot charge different rates to drivers who estimate mileage and drivers who choose to participate in mileage verification programs. Mandatory mileage verification for every driver is the only option. Mandatory mileage verification will make individual premiums more accurate and will ensure that the charge is based on mileage.

Response: O + V + Z. Because the regulations establish the method for rating and pricing, there is no violation of California Insurance Code Section 1861.02(a)(4).

P5: *Verification methods*

Mileage verification must not be unduly burdensome to consumers. Proposed section 2632.5(c)(2)(E)(1) allows insurers, but not consumers, the ability to choose from the available verification options. The regulation should be amended to make sure that every driver is offered a minimally invasive option for verification. It should also limit the data collected to mileage data. It should also make clear that insurers cannot charge more to those who refuse to use a technological device. Again, this is because a technological device is not an approved rating factor.

Response: B + D + N.18 + + N.19 + N.20 + V. +Z. Because the regulations authorize use of a technological device, they necessarily approve use of such a device.

Consumer Watchdog suggests that policyholders be allowed to provide mileage verification in the manner they obtained coverage. If they obtained coverage at an agent's office they should be able to bring the car to the agent's office for verification. If they apply for insurance over the Internet they should be able to provide odometer readings over the internet. In this way companies could accept data in the same way that they found sufficient to obtain other critical policy information. Of course the insurers could choose to offer additional verification methods.

Response: D. Insurers have an incentive to offer mileage verification methods that are convenient to their policyholders and consistent with the manner in which coverage was obtained.

P6: Consumer Watchdog proposes the following language to be added to proposed CCR section 2632.5(c)(2)(E):

(1) An insurer may require policyholder to verify actual mileage in the same manner in which the policyholder applied for coverage.
(2) An insurer may request, but not require, policyholder to verify actual mileage either:
   a. by odometer readings of the insured vehicle or vehicles, made by an employee or agent of the insurer; or
   b. through the service records of an automobile repair dealer, as defined by section 9980.1 of the Business and Professions Code, provided to the insurer by the policyholder pursuant to subdivision (D)(1); or
   c. through the use of technological devices provided by the insurer or otherwise made available to the insured that collect only vehicle mileage information; or
   d. through a report of the insured of the odometer reading of the insured vehicle or vehicles; or
   e. through an independent third party as approved by the Commissioner.
(3) An insurer may verify mileage once at the end of the policy term, and may request, but not require, the applicant or policyholder to verify mileage more frequently.

Response: B + D. The regulation has been amended to adopt most of the proposals in paragraph (2) above. The proposals in paragraphs (1) and (3) are rejected.

Additional rating factors

Information about driver behavior such as braking patterns, speed, time of day or type of road driven ("driver behavior factors") do not fall under the second mandatory factor and could only be used if they are approved as new optional rating factors. Consumer Watchdog has expressed opposition to this type of factor and will respond further if and when such factors are proposed.

Response: M.1 +U.

It seems that the first mandatory rating factor (driving safety record) already captures the type of information that would be available through driver behavior factors. Further, any new factors would have to comply with the weighting requirements of CCR 2632.8(d) and 2632.5(e).

Finally driving behavior information would require the use of the technology device which raises the same privacy and fairness concerns already discussed.

Response: M.1.

With regard to privacy, technological devices should not be permitted to collect any information other than mileage unless and until such information is approved as one or more new optional rating factor(s).

Response: N.10 + N.19 + N.20.

P7: *How would "pay-as-you-drive" really operate?*

Consumer Watchdog asks the following additional questions:

- What will mileage verification cost and how will the cost be passed on to drivers?
- How will consumers actually see savings from reducing their mileage?
- Will rebate checks or surcharge bills be issued?
- How will prospective discounts work for insureds who change insurers?
- How will the Department ensure that it will not result in unfairly discriminatory rates for drivers who drive the same number of miles, especially those drivers for whom certain verification methods may be burdensome?

Response: U + V +Z. As with many other options which insurers can choose to provide to their customers, the regulations allow insurers flexibility in what options they will provide an the manner in which they will provide it, subject to the Commissioner's approval in an insurer's class plan. This is in keeping with Proposition 103's stated goal to encourage a competitive insurance marketplace.

Consumer Watchdog recommends that the Department enlist the technical expertise of department staff to assess the above questions and ensure that the regulations are drafted in compliance with the auto rating factor regulations and Insurance Code Section 1861.02. Consumer Watchdog would be willing to participate in further discussions with the Department on these regulations.

Response: U.

Carmen Balber oral comments as recorded in the transcript of the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

PP40:16-41:21: Very small mileage bands would create "recognizable correlation" alerting drivers to the relationship between how far they drive and how much they pay. Currently, some insurers' bands are too wide for consumers to make the connection between how far they drive and how much they pay.

Response: B + K.

PP41:22-43:5: California already has pay-as-you-drive insurance and is the only state that requires insurers to use mileage as a rating factor. Therefore, we should require PAYD policies and shouldn't rate people differently based on whether they use verified or estimated mileage. Mileage verification should be mandated across-the-board to eliminate the tension between verifiers and estimators. It would also give the industry important data about how many miles people drive and how closely related that is to risk of loss.

Response: B + O.

Additional mileage verification methods are also appropriate including "service stations, smog check, etc." Self reporting of miles driven is a very important verification method.

Response: D + F.

PP43:6-44:10: The regulation should explicitly make it illegal for insurers to require tracking devices.

Response: B + N.16. Although insurers may use technological devices, the information that may be collected and/or used is limited and prescribed.

PP44:11-45:1: Quality-of-Miles factors would unnecessarily complicate this regulation which should be focused exclusively on implementing the second mandatory factor (miles driven) and those factors should be left for another time.

Response: F + M.1.

24. Tom Wenzel, Research Assistant, Lawrence Berkeley National Laboratory

Calling for vehicle miles driven to be one of the three mandatory rating factors will improve the efficiency and equity of auto insurance for consumers in California and will provide strong incentives for motorists to drive less and help meet California air quality goals and greenhouse gas reduction goals established by AB32.

Response: Annual miles driven is currently the second mandatory rating factor.

Making annual miles driven a mandatory rating factor will not in itself lower rates for consumers but will redistribute the current cost of auto insurance making those who drive more pay more. But because the regulation will incentivize people to drive less the regulation may reduce the total miles driven. This would reduce the number of accidents and associated costs and therefore the price of auto insurance.

Response: A + U.

These benefits will accrue only if large numbers of drivers opt for mileage-based coverage. If the coverage is optional, only low mileage drivers would be likely to switch to mileage-based insurance high mileage drivers would continue to buy "term" or estimated mileage coverage and this will limit the effectiveness of pay-as-you-drive insurance.

Response: O.

Determining annual mileage accurately is probably the most difficult problem with pay-as-you-drive insurance.

Response: D.

Mr. Wenzel disputes the views expressed by some other commentators that policyholders can be trusted to accurately report their odometer readings because they have a strong financial incentive to underreport. But the Department could rely on odometer inspections or readings taken by a technological device that transmits the number of miles driven wirelessly.

Response: D.

Other commentators expressed concern about technological devices that would collect data about driving behavior without the vehicle owner's permission. The regulation should specify exactly what information can be used by insurers to set premiums.

Response: F + N.10 + N.14 + N.19 + N.20.

But insurers could provide locations where insureds could bring the car in for odometer readings or insurers could send agents to the motorist’s home at a scheduled time to read the odometer.

Response: D.

Some commentators suggested allowing insurers to use existing databases for odometer information. But there are problems with these databases including the smog check emission test results database. Not all vehicles are in the databases. Some vehicles are exempt from smog check or are not checked frequently enough for insurance purposes (they are generally checked every two years). Therefore they cannot be used to determine annual mileage.

Response: D. Although smog check readings may not be available for all vehicles, the regulations recognize that BAR data may be helpful in determining miles driven. In part for the reasons noted, additional mileage verification options are also set forth.

The Department should investigate how it can get more frequent odometer readings. The California Air Resources Board (CARB) is considering a regulation that would require certain automobile service facilities to check tire pressure of every vehicle that visits the facility. The Department could work with CARB to assess the feasibility of also requiring odometer readings that would be reported to the state. These odometer readings could be used to track mileage for insurance purposes. It would also help track progress toward the state's goals of reducing greenhouse gas emissions. This type of approach may be preferable to the public then mandating use of electronic devices to track mileage.

Response: F.

25. Dorothy Glancy, Professor, Santa Clara University School of Law

P1, ¶1: The proposed regulation takes a relatively minimalistic approach to authorizing rates based on verified miles driven. This letter addresses six concerns about the regulation:

1) Consumer choice to participate in Pay-Drive is unlikely real or informed
2) Retroactive insurance premium adjustments need to be clarified
3) Provision of technological devices is unclear
4) Nature of permitted and unpermitted technological devices is unclear
5) Department's privacy regulations need to be amended
6) Uncertain results of proposal may lead to undesirable consequences

Response: U.

1. Consumer choice to participate in PAYD is unlikely to be real or informed

P1, ¶2-P2 (half of top paragraph):

Consumer choice in the proposed optional PAYD will only be meaningful if the program is explained to the consumer. Under the proposed regulation it is unclear whether discounts are available for agreeing to participate in a PAYD program or for agreeing to having a technological device in the vehicle. The nature of the discounts is unclear. A discount for using an electronic device would "authorize efforts to buy out consumers' privacy" without full disclosure. The regulation should require a "fair and balanced explanation" of what the insurers will do with the collected information.

Response: G + U + N.3. The final regulations provide that an insurer offering both a mileage estimation program and a verified actual mileage program may provide a discount to a policyholder who participates in a verified actual mileage program. There is no requirement that a policyholder agree to use of a technological device in order to obtain a discount. However, the discount is based on cost savings or actuarial accuracy, and an insurer may determine that cost savings or actuarial accuracy are obtained only through use of a technological device. The nature of the discount is clear – it is based on the actual cost savings or actuarial accuracy resulting from obtaining and using actual mileage.

2. Retroactive Insurance Premium Adjustments Need to be Clarified

P2, ¶1 – P3, ¶2: The term "retroactive insurance premium adjustments", under 2632.5(c)(2)(E)(3), should explicitly state that the rate adjustments can be upward or downward based on how many miles insured actually drives. It is not clear from the regulation how the surcharge or refund would be calculated but it would likely be based on a comparison of the estimated miles driven and the actual miles driven. The insurers should be obligated to refund premium if the insured actually drives fewer miles than estimated.

Response: B + N.12. The regulations are clear that premium adjustment is based on actual miles driven, which could be an increase if more miles are driven, or a decrease if fewer miles are driven. The Commissioner has determined not to require insurers to adjust premiums.

In order to protect consumers from "unanticipated and potentially bankrupting 'balloon' insurance payments and other potential unfairness" Prof. Glancy proposes adding the following language to clarify the term "retroactive premium adjustments" as follows:

> "The retroactive adjustment authorized under this section is in addition to the authorized discount for cost savings provided under subsection (E)(3). The retroactive adjustment will be made through the following contractual process:
> (i) A written agreement between insurer and insured will be made prior to the effective date of the policy regarding the estimated number of miles the insured vehicle is expected to be driven during the policy's effective period and the rate-per-mile to be applied at the end of the policy's effective period for verified mileage different from the agreed mileage estimate.
> (ii) At the end of the policy's effective period the actual miles driven during the policy's effective period will be verified, pursuant to subsection (E)(1).
> (iii) The difference between the pre-policy-period mileage estimate, (i) above, and the verified actual mileage, (ii) above, will be calculated.
> (iv) When the calculation in (iii) above indicates that the insured vehicle was actually driven fewer verified miles than were estimated in the agreement in (i) above, the insurer will pay to the insured the agreed rate-per-mile as a rebate.
> (v) When the calculation in (iii) above indicates that the insured vehicle was actually driven more verified miles than were estimated in the agreement in (i) above, the insured will pay to the insurer the agreed rate-per-mile as an additional retrospective premium."

There should also be an agreed post-policy-period rate per mile for any adjustment. This would incentivize insureds to drive fewer miles.

Response: B. The regulation already requires that notice be given to the policyholder prior to the effective date of the policy. The Commissioner has determined not to dictate the provisions of that notice. As the comment notes, insurers have an incentive to advertise the advantages of verified mileage programs.

3. Provision of Technology Devices is Unclear

P3, ¶3 – P4, ¶2: How technological devices would be "otherwise made available" to an insured under 2632.5(c)(2)(D)(2) is unclear and potentially deceptive. The phrase "otherwise made available to the insured" needs clarification or the clause should be eliminated.

Response: N.16. The originally-proposed language has subsequently been amended.

As an expert on this subject, Ms. Glancy is familiar with various types of intrusive technological devices such as DDRs (Driver Data Records) and EDRs (Event Data Recorders) which were so controversial, state and federal regulation were required. These types of devices, which can be built into automobiles, fall under the umbrella of SDM (Sensing and Diagnostic Modules) and pose a real threat to privacy.

Response: U.

Several automobile manufacturers and the US Department of Transportation oversee and develop the VII (Vehicle Infrastructure Integration program) which is set for deployment within the next decade. The program is capable of tracking and compiling detailed itineraries of vehicles and their drivers in real time. In the very near future, vehicle data and infrastructure will be so interwoven as to make isolation of data very difficult. The policy framework for the VII specifically excludes insurer access to this information. The PAYD regulation should be amended to clearly prohibit use of data from these devices by insurers as well. Failure to modify the regulation in this way will knowingly endanger consumers' privacy.

Response: N.19 + N.20.

4. Nature of Permitted and Unpermitted Technological Devices Requires Better Clarification

P4, ¶3 – P5, ¶3: Although the Commissioner has repeatedly reassured his constituents that GPS and other location or tracking will not be allowed, the proposed regulation fails to define what types of devices can be used and fails to specifically exclude GPS-type devices. To remedy this problem Professor Glancy proposes inserting the following language at the end of section 2632.5(c)(2)(D)(2):

> "For the purposes of this section 2632.5, 'technological devices' include components that solely reflect or collect vehicles miles driven. 'Technological devices' permitted under this regulation do not include
>
> - any device, such as GPS, that collects or transmits location, driving behavior or other data with regard to a vehicle or its driver's driving behavior, or
> - any device that has the capacity to wirelessly transmit vehicle mileage or other information while the vehicle is being driven."

Response: Q.

This section is necessary to protect the privacy rights of Californians guaranteed under Article I Section 1 of the California Constitution. The purpose of this provision was to "'[place] restraints on the information activities of the government and business…. Fundamental to our privacy is the ability to control circulation of personal information. This is essential to social relationships and personal freedom. The proliferation of government and business records over which we have no control limits our ability to control our personal lives.'"

Response: N.10 + N.14 + N.19 + N.20.

5. Department's Privacy Regulations Need to be Amended

P5, ¶4 – P6, ¶5: The new PAYD regulations create, "verified actual miles driven", a new category of information collected by insurers. Accordingly, the Department's privacy regulations need to be amended as well. The current privacy regulations only provide opt-out choices for consumers. As such, the Department should amend their privacy regulations to include opt-in choices.

Response: N.2 + N.3 + N.8. California Insurance Code Sections 791 *et seq.* address information collection by insurers. The Department cannot change statutory provisions by regulation.

2632.5 subsection E should be amended as follows to specify that verified mileage is nonpublic personal information:

> (1) That remains under the control of the insured and only disclosed pursuant to Pay-Drive mileage program requirements suggested in these comments, and
> (2) That an insurer is permitted to use this information only for the purposes of calculating insurance premium.

Response: N.8.

Accordingly the following provision should be added to the Department's Privacy Regulations after § 2689, as new section 2689.45 :

> "With regard to verified-mileage-driven data authorized under section 2632.5(c)(2)(E), such information is nonpublic personal information that is neither financial (Article 2) nor medical (Article 3) information; a licensee must obtain a consumer's express written permission before sharing this verified mileage driven information with others or using it for purposes other than Pay-Drive premium calculations."

Response: N.3 + N.8. The Department cannot, by regulation, change statutory provisions.

Upon a careful review of the Department's insurance privacy regulations it may be wise to add a new Article to protect many other types of information with opt-in protection. Additional opt-in provisions should be considered when the 2003 privacy regulations are revised to comply with recent amendments of the California Insurance Code.

Response: Whether information is subject to opt-in provisions, opt-out provisions, or no-opt provisions is addressed by statute. Regulations are not necessary to repeat statutory provisions.

6. Uncertain Results of the Proposal May Lead to Undesirable Consequences

P6, ¶6 – P8: It is unclear whether the proposed regulation will reduce the number of miles driven in California. Whether requiring drivers to pay based on mileage will result in fewer miles driven has not been established.

Response: The regulations provide another way to define the “number of miles he or she drives annually” in California Insurance Code Section 1861.02(a)(2).

A recent study in Oregon concluded that paying for insurance by the mile "tends to be regressive" and to have a greater impact on poor drivers than affluent ones. The Department should study the question of who would benefit from the proposed PAYD system. "In short, the fundamental economics of the proposal should be studied further before claiming environmental effectiveness and social justice benefits that may at best be illusory."

Response: The regulations provide another way to define the “number of miles he or she drives annually” in California Insurance Code Section 1861.02(a)(2). The regulations allow insurers to continue to offer estimated mileage programs, and it is anticipated that many insurers will continue to offer estimated mileage programs. Consumers who prefer to purchase insurance in the traditional manner will be able to do so.

The above several suggestions for additions and clarifications to the proposed regulation, does not imply that Prof. Glancy supports this regulation.

Response: U.

Prof. Glancy oral comments as recorded in the transcript of a the public hearing on October 20, 2008 (Comments that are not duplicative of written comments are summarized below):

P18:4-25: Ms. Glancy has experience working on privacy implications of intelligent transportation systems.

Response: U.

PP20:1-21:3: "Technological device" needs to be more clearly defined in the regulation.

Response: N.16.

PP21:4-22:3: If devices that are already built into automobiles are allowed to be used, they could, without the consumer's knowledge, transmit “extremely valuable, quite personal information” about the insured. In addition, mileage is a whole new category of information. Further all of this needs to be clearly designated as "nonpublic personal information."

Response: N.8 + N.10 + N.14 + N.19 + N.20.

PP23:5-24:1: Information, other than mileage driven should not go to insurance companies because they have no need for it and they have no right to it.

Response: N.10 + N.14 + N.19 + N.20.

26. John Sebastianelli, Michelman and Robinson, LLP, for Exigen Insurance Solutions

P1: Exigen is not an insurer. Exigen has developed a Pay Per Mile ("PPM") program that has been implemented by an insurer in Australia. Exigen would like to partner with an existing insurer in California to start a PPM program. As further summarized below, the first 3 1/2 pages of Exigen's comments describe Exigen's program and how an insurer may implement it in California.

Response: U.

P2, ¶1: Exigen's PPM program allows liability coverage to be written as time based and auto physical damage coverage to be written as mileage based.

Response: U.

P2, ¶2: Offers suggestions to capture mileage; odometer readings at the inception and expiration of the policy and other times the policy is in effect. Also the insurer could require an odometer reading when additional miles are purchased.

Response: D.

P2, ¶3: Verification can be accomplished by photos of the dashboard, verification suggested in (E)(1) and anything that may be developed.

Response: D.

P2, ¶4: Insurer can require that a minimum number of miles be purchased.

Response: T.

P2, ¶5: Unused miles at the end of the term can be refunded or credited to the next policy period.

Response: Section (F)(ii) specifically authorizes this.

P3, ¶1: If additional miles have to be purchased during the policy period the contact/purchase method would be same contact mode when the insured purchased the policy.

Response: T.

P3, ¶2: Exigen will work with the insurers it partners with to design programs that will let it capture mileage purchases depending on the types of technology required.

Response: U.

P3, ¶3: To remind insureds to purchase additional miles, Exigen suggests periodic e-mails, text messages, window stickers, and incentives to drivers that report often. The frequency of the contact will be related to accuracy of the miles reported.

Response: D.

P3, ¶4: Grace miles could be included depending on the number of miles purchased.

Response: T.

P4, ¶¶1-2: Exigen would not utilize retrospective premiums but rely on incentives for frequent reporting. Exigen would require insureds to report odometer readings on specified dates. This will ensure that the insured is on track for the miles purchased. This would allow for adjustments during the policy period.

Response: T + U. The Commissioner has determined not to set forth such specificity in the regulations.

P4, ¶3: If the insured fails to report mileage on the specified dates or fails to pay for a mileage overage, then Exigen would have the right to nonrenew the policy.

Response: R.

P5, ¶1: If Exigen is statutorily barred from nonrenewing a policy, then Exigen would want the right to convert the PPM to standard mileage bands.

Response: T.

PP5, ¶2 to End: Exigen proposes numerous specific language changes to the regulation. Virtually all of the changes specifically apply to price per mile types of programs.

Response: T.

27. Fred Blumer, Hughes Telematics [oral testimony as recorded in the transcript of the public hearing on October 20, 2008]

PP58:14-59:22: Telematics systems will probably exist in all new cars in the United States within five years. The devices already exist in many vehicles and will be able to report data such as annual mileage, odometer readings, miles per gallon, Quality-of-Miles, and so forth. Usage-based insurance should be voluntary and with full consumer consent and knowledge/disclosure.

Response: F + N.10 + N.14 +N.19 + N.20.

PP59:23-60:1: Insurers should be able to rate on such things as how people drive (Quality-of-Miles).

Response: M.1.

P60:2-11: Disadvantaged people typically live further from their workplaces and may be penalized by a mileage-based system. Any technology that gives people more choice, and more opportunities to be rewarded for driving safely, should be considered.

Response: A + D M.1+ X.

28. Walter Smith, Quetzal Management Corporation [oral testimony as recorded in the transcript of the public hearing on October 20, 2008]

PP60:15-61:3: Mileage verification should be mandatory for all auto insurance and should be done by independent sources.

Response: B + O.

P61:4-10: Under Proposition 103, driving safety record is the most dominant rating factor but the way it is done now mileage is the most dominant rating factor.

Response: M.2. Driving Safety Record has the most weight in determining a driver's rates and premiums.

P61:11-19: Environmental issues are valid concern and manufacturers are encouraged to make cars that will get higher gas mileage.

Response: U.

P61:20-25: The good driver discount under Proposition 103 should be retained under the new regulations.

Response: Y.

P62:1-6: The second mandatory rating factor (mileage) does not affect eligibility for the good driver discount under Proposition 103.

Response: The comment is correct.
P62:7-19: The regulations will "really affect how carriers enforce business" but these same carriers have an obligation to their shareholders. Mr. Smith supports the commissioner's goals of these regulations.

Response: A + U.

29. General Response E-mail Letter 1 (verbatim). (Received 539 duplicates).

Dear Mr. Goodell,

I strongly support your efforts to put forward regulations to permit Pay As You Drive (PAYD) insurance in California. PAYD is a simple reform with wide-ranging benefits. Californians would save money, drivers would have safer roads, and we all would benefit from a cleaner environment. No other environmental policy currently under consideration could so quickly have meaningful environmental benefits while actually saving most Californians money.

Response: A + G.

But to realize these benefits, PAYD insurance needs to become a reality. While permitting PAYD is essential, getting PAYD policies written and in the glove compartments of California drivers is the real goal. That's why I urge you to *require* companies that sell auto insurance in California to offer a mileage-based Pay As You Drive product to their customers.

Response: B + O.

By requiring PAYD, you can give California drivers a clear and easy way to save money, while also rewarding those who do their part for the environment, and their fellow drivers, by driving less. Please strengthen the draft regulation to require PAYD insurance policy options for all California drivers.

Response: O.

30. General Response E-mail Letter 2 (verbatim). (Received 17 duplicates).

Insurance Commissioner Poizner,

Californians should pay less for auto insurance if we drive less, but insurance companies should not be allowed to require me to place high-tech spyware in my car under the pretense of verifying my mileage.

Response: N.10 + N.14 + N.19 + N.20.

I understand that your proposed 'pay-as-you-drive' regulations require that insurance companies give drivers options - including a visual odometer check - for verifying mileage. I support that requirement.

Response: A.

But it doesn't go far enough. You should also ban insurance companies from collecting other driving information – like how fast we speed up and slow down, and when and where we drive.

Insurance companies could do anything with that kind of data.

Will insurers avoid selling insurance to late-shift workers because they drive at night? Deny a claim because someone came to a screeching halt two times last month? Surrender driving location data to a spouse's divorce attorney?

I urge you to ensure your regulations limit the information insurers can collect to mileage only. This will protect driver privacy as you've promised, and ensure fair insurance rates for all California drivers.

Response: N.10 + N.14 + N.19 + N.20 + M.1.

31. Michael Brazil (variation on general responder e-mail)

Opposes "all of this legislation." government or insurance companies should not involve themselves in how much a person drives. All that matters is whether a driver has a good driving record.

Response: Under Proposition 103 the department must enforce the three mandatory auto rating factors. The second mandatory rating factor is number of miles driven annually. This regulation furthers the implementation of the second mandatory rating factor.

Opposes lower rates based on mileage opposes having to verify mileage to insurance companies.

Response: O.

The regulations are an attack on privacy.

Response: N1 + N.2 + N.3.

Urges the Department to limit the information insurers can collect a mileage only.

Response: N.10 + N.14 + N.19 + N.20 + M.1.

32. Kelly O'Connor (variation on general responder e-mail)

Substantially identical to #30, above.

33. Gail Rubio (variation on general responder e-mail)

Substantially identical to #29, above except, this commenter drives less than 100 miles per month. Drivers like this commenter do not contribute to the causes of increased insurance costs and therefore should be granted a lower premium for insurance.

Response: A + L.

34. Michael Linvill (variation on general responder e-mail)

Pay -as-you-drive insurance is a simple but critical way to reduce overwhelming traffic congestion and pollution. Accordingly auto insurers in California should be required to offer a mileage-based pay-as-you-drive product.

A + O.

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